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Authority

The provisions of this Chapter 15 issued and amended under the Older Adults Protective Services Act (35 P. S. §§ 10225.101—10225.5102), unless otherwise noted.

Source

The provisions of this Chapter 15 adopted November 25, 1988, effective November 26, 1988, 18 Pa.B. 5249, unless otherwise noted.

Cross References

This chapter cited in 6 Pa. Code § 21.55 (relating to AAA placement activities); 55 Pa. Code § 2600.51 (relating to criminal history checks); and 55 Pa. Code § 2600.52 (relating to staff hiring, retention and utilization).

GENERAL PROVISIONS

§ 15.1. Scope and authority.

(a) This chapter governs the administration and provision of protective services for older adults under the act, the mandatory reporting of the abuse of recipients of care and required criminal history record information reports for applicants, employees and administrators of facilities.

(b) This chapter applies to the Department, area agencies on aging, providers of protective services for older adults, parties to the making and investigation of reports of a need for protective services by older adults, subjects of reports and investigations and the facilities defined in this chapter.

(c) The Department will enforce this chapter and maintain responsibility for future revisions as the continuing operation of the program requires.

Source

The provisions of this § 15.1 amended May 17, 2002, effective May 18, 2002, 32 Pa.B. 2412. Immediately preceding text appears at serial page (228889).

§ 15.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Abandonment—The desertion of an older adult by a caretaker.

Abuse—

(i) The occurrence of one or more of the following acts:

(A) The infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish.

(B) The willful deprivation by a caretaker of goods or services which are necessary to maintain physical or mental health.

(C) Sexual harassment, rape or abuse, as defined in 23 Pa.C.S. Chapter 61 (relating to Protection From Abuse Act).

(ii) No older adult will be found to be abused solely on the grounds of environmental factors which are beyond the control of the older adult or the caretaker, such as inadequate housing, furnishings, income, clothing or medical care.

Act—The Older Adults Protective Services Act (35 P. S. §§ 10225.101—10225.5102).

Administrator—The person responsible for the administration of a facility. The term includes a person responsible for employment decisions or an independent contractor.

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Agency—The local provider of protective services, which is the area agency on aging or the agency designated by the area agency on aging to provide protective services in the area agency's planning and service area.

Applicant—An individual who submits an application, which is being considered for employment, to a facility.

Area agency on aging—The single local agency designated within a planning and service area by the Department to develop and administer the delivery of a comprehensive and coordinated plan of social services and activities for older adults.

Assessment—A determination based upon a comprehensive review of a client's social, physical and psychological status along with a description of the person's current resources and needs using the instruments and procedures established by the Department for this purpose.

Care—Services provided to meet a person's need for personal care or health care.

(i) Services may include homemaker services, assistance with activities of daily living, physical therapy, occupational therapy, speech therapy, social services, home-care aide services, companion-care services, private duty nursing services, respiratory therapy, intravenous therapy, in-home dialysis and durable medical equipment services, which are routinely provided unsupervised and which require interaction with the care-dependent person.

(ii) The term does not include durable medical equipment delivery.

Care-dependent individual—An adult who, due to physical or cognitive disability or impairment, requires assistance to meet needs for food, shelter, clothing, personal care or health care.

Caretaker—An individual or institution that has assumed the responsibility for the provision of care needed to maintain the physical or mental health of an older adult. This responsibility may arise voluntarily, by contract, by receipt of payment for care, as a result of family relationship or by order of a court of competent jurisdiction. It is not the intent of the act to impose responsibility on an individual if the responsibility would not otherwise exist in law.

Case file, case record or *record*—A complete record of the information received and the actions taken by the agency on each report of need received. When applicable, it shall include the following elements:

(i) The report of need.

(ii) Records of agency investigative activities including related evidence and testimony.

(iii) Assessment.

(iv) Documentation of informed consent provided or agency efforts to obtain consent.

(v) Notifications of older adults, alleged perpetrators, police, agencies, organizations and individuals.

(vi) Records of court, intervention, petition or action.

(vii) Service plan.

Conflict of interest—The conflict which may exist when the investigator of a report of the need for protective services has a personal or financial interest in, is responsible for, or is employed by others responsible for, the delivery of services which may be needed by an older adult to reduce or eliminate the need for protective services. A conflict of interest may also exist if an investigator has a specific personal or financial motivation to recommend services delivered by a specific agency or to allow referrals or case dispositions to be inappropriately influenced by the investigator's knowledge of agency staff, resource limitations or by agency constraints which affect agency staff or resource allocations.

Consumer attendant—An individual who is recruited, hired, trained, directed and supervised by the consumer for whom personal care services and other support activities are being provided.

Court—A court of common pleas or a district magistrate, if applicable.

Criminal history report—

(i) For an applicant or employee who is a resident of this Commonwealth, a State Police criminal history record.

(ii) For a nonresident applicant or employee, a State Police criminal history record and a Federal criminal history record.288584

Department—The Department of Aging of the Commonwealth.

Desertion—The willful failure without just cause by the responsible caretaker to provide for the care and protection of an older adult who is in need of protective services.

Direct contact—Touching of a recipient by an employee consistent with the professional responsibilities of the employee.

Employee—Includes the following:

(i) An individual who is employed by a facility.

(ii) A facility contract employee who has direct contact with residents or unsupervised access to their living quarters.

(iii) An individual who is employed by, or who enters into a contractual relationship with, or who establishes any other agreement or arrangement with a home health care agency to provide care to a care-dependent person for a fee, stipend or monetary consideration of any kind in the person's place of residence.

(iv) A student doing an internship or clinical rotation, or any other individual, who has been granted access to the facility to perform a clinical service for a fee.

(v) An individual, employed by an entity which supplies, arranges for, or refers personnel to provide care to care-dependent persons, who is employed to provide care to care-dependent persons in facilities or their places of residence.

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Exploitation—An act or course of conduct by a caretaker or other person against an older adult or an older adult's resources, without the informed consent of the older adult or with consent obtained through misrepresentation, coercion or threats of force, that results in monetary, personal or other benefit, gain or profit for the perpetrator or monetary or personal loss to the older adult.

Facility—Any of the following:

(i) A domiciliary care home as defined in sections 2201-A—2212-A of The Administrative Code of 1929 (71 P. S. §§ 581-1—581-12).

(ii) A home health care agency.

(iii) A long-term care nursing facility as defined in the Health Care Facilities Act (35 P. S. §§ 448.101—448.904b).

(iv) An older adult daily living center as defined in the Older Adult Daily Living Centers Licensing Act (62 P. S. §§ 1511.1—1511.22).

(v) A personal care home as defined in section 1001 of the Public Welfare Code (62 P. S. § 1001).

Federal criminal history record—A report of Federal criminal history record information under the Federal Bureau of Investigation's appropriation under the Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1973 (28 U.S.C.A. § 534).

Home health care agency—

(i) Any of the following:

(A) A home health care organization or agency licensed by the Department of Health.

(B) A public or private agency or organization, or part of an agency or organization, which provides care to a care-dependent individual in the individual's place of residence.

(ii) The term includes private duty home care providers, homemaker/home health aide providers, companion care providers, registry services or intravenous therapy providers.

Incapacitated older adult—An older adult who, because of one or more functional limitations, needs the assistance of another person to perform or obtain services necessary to maintain physical or mental health. The definition of capacity or incapacity or competence or incompetence, as defined in 20 Pa.C.S. §§ 5501—5555 (relating to guardianship), does not apply to this definition.

Informed consent—Consent obtained for a proposed course of protective service provision. The consent shall be based on a reasonable attempt to provide information which conveys, at a minimum, the risks, alternatives and outcomes of the various modes of protective service provision available under the circumstances.

Intimidation—An act or omission by a person or entity toward another person which is intended to, or with knowledge that the act or omission will,

obstruct, impede, impair, prevent or interfere with the administration of the act or any law intended to protect older adults from mistreatment.

Investigation—A systematic inquiry conducted by the agency to determine if allegations made in a report of need for protective services can be substantiated, or if the older adult referred to in the report of need is an older adult in need of protective services, or both.

Law enforcement official—One of the following:

(i) A police officer.

(ii) A district attorney.

(iii) The State Police.

Least restrictive alternative—The appropriate course of action on behalf of the older adult which least intrudes upon the personal autonomy, rights and liberties of the older adult in circumstances when an older adult lacks the capacity to decide on matters and take actions essential to maintaining physical and mental health.

Neglect—The failure to provide for oneself or the failure of a caretaker to provide goods or services essential to avoid a clear and serious threat to physical or mental health. An older adult who does not consent to the provision of protective services will not be found to be neglected solely on the grounds of environmental factors which are beyond the control of the older adult or the caretaker, such as inadequate housing, furnishings, income, clothing or medical care.

Older adult—A person within the jurisdiction of this Commonwealth who is 60 years of age or older.

Older adult in need of protective services—An incapacitated older adult who is unable to perform or obtain services that are necessary to maintain physical or mental health, for which there is no responsible caretaker and who is at imminent risk of danger to his person or property.

Operator—A person, society, corporation, governing authority or partnership legally responsible for the administration and operation of a facility. At licensed facilities, the licensee is the operator.

Planning and service area—The geographic unit within this Commonwealth, as designated by the Secretary, for the allocation of funds for the delivery of social services to older adults residing in that unit.

Police department—A public agency of the Commonwealth or of a political subdivision having general police powers and charged with making arrests in connection with the enforcement of the criminal or traffic laws, or both.

Police officer—A full-time or part-time employee of the Commonwealth, a city, borough, town, township or county police department assigned to criminal or traffic or criminal and traffic law enforcement duties. The term does not include persons employed to check parking meters or to perform only administrative duties, auxiliary and fire police.

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Protective services—Activities, resources and supports provided to older adults under the act to detect, prevent, reduce or eliminate abuse, neglect, exploitation and abandonment.

Protective services caseworker—A protective services agency employee, regardless of staff title, who meets the minimum standards in §§ 15.121—15.127 (relating to staff training and experience standards) and is assigned by the agency under § 15.13(c) (relating to organization and structure of protective services functions) to perform the following protective services functions:

(i) To receive reports of a need for protective services when necessary.

(ii) To investigate reports received under this chapter.

(iii) To assess the needs of protective services clients under this chapter.

(iv) To develop and coordinate the implementation of service plans for protective services clients.

Protective setting—A setting chosen by the agency where services can be provided in the least restrictive environment to protect the physical and mental well-being of the older adult.

Public or private entitlement or resource—A publicly or privately funded health or human services program available either without charge or on a cost-sharing basis to persons who qualify on the basis of one or more criteria, such as age, need, income or condition.

(i) The term includes various established financial assistance programs under public or private sponsorship.

(ii) The term does not include individual personal income or financial assets.

Recipient—An individual of any age who receives care, services or treatment in or from a facility.

Report or *report of need*—The written report of an older adult in need of protective services received under § 15.23 (relating to receiving reports; general agency responsibility) and recorded on the standardized protective services report form.

Responsible caretaker—A caretaker who is able and willing to provide the basic care and protection necessary to maintain the physical or mental health of an older adult. A caretaker reported to have abused, neglected, exploited or abandoned an older adult is presumed, subject to an investigation under this chapter, to be unable or unwilling to provide the necessary care and protection.

Secretary—The Secretary of the Department.

Serious bodily injury—Injury which creates a substantial risk of death or which causes serious permanent disfigurement or protracted loss or impairment of the function of a body member or organ.

Serious physical injury—An injury that does one of the following:

(i) Causes a person severe pain.

(ii) Significantly impairs a person's physical functioning, either temporarily or permanently.

Service plan—A written plan developed by the agency on the basis of a comprehensive assessment of an older adult's need which describes identified needs, goals to be achieved and specific services to support goal attainment, with regular follow-up and predetermined reassessment of progress. Specific services to support goal attainment may include homemaker services, home-delivered meals, attendant care, other in-home services, emergency shelter or food, legal aid services, transportation and other services. Service plans are cooperatively developed by the agency staff, the older adult or the older adult's appointed guardian and other family members when appropriate. The plan shall also address, if applicable, special needs of other members of the household unit as they may affect the older adult's need for protective services.

Sexual abuse—Intentionally, knowingly or recklessly causing or attempting to cause rape, involuntary deviate sexual intercourse, sexual assault, statutory sexual assault, aggravated indecent assault, indecent assault or incest.

State-licensed facility—For all purposes involved in the determination of whether an individual is an older adult in need of protective services, a State licensed facility is defined as an institution licensed by the Commonwealth to provide temporary or permanent residence to persons in need of personal care or medical care, including nursing homes, personal care homes, hospitals, State hospitals and mental retardation centers.

State Police—The Pennsylvania State Police.

State Police criminal history record—A report of criminal history record information from the State Police or a statement from the State Police that their central repository contains no information relating to that person.

Unsupervised access—Access to personal living quarters of residents when not accompanied by or within direct supervision of an employee of the facility.

Source

The provisions of this § 15.2 amended May 17, 2002, effective May 18, 2002, 32 Pa.B. 2412. Immediately preceding text appears at serial pages (228889) to (228890).

Cross References

This section cited in 6 Pa. Code § 15.92 (relating to assessment); 6 Pa. Code § 15.96 (relating to termination of protective services); 6 Pa. Code § 15.101 (relating to general); and 6 Pa. Code § 15.111 (relating to coordination of available resources).

PROGRAM ADMINISTRATION

§ 15.11. Administrative functions and responsibilities of the Department.

(a) *General responsibilities*. The Department will establish and maintain a Statewide system of protective services for older adults who need them. These services will be available and accessible through local protective services agencies. In maintaining this system of protective services, the Department's functions and responsibilities include the following:

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(1) The review and approval of annual protective services plans submitted by area agencies under § 15.12(b) (relating to administrative functions and responsibilities of area agencies on aging).

(2) The allocation of funds appropriated for the implementation of the act to area agencies on aging to administer local protective services plans.

(3) The establishment of minimum standards of training and experience for protective services staff.

(4) The development and maintenance of a fiscal and service data collection system to collect information on local reports of a need for protective services, investigations, services provided and other relevant data on protective services activities.

(5) The monitoring of local protective services delivery for compliance with this chapter and approved area agency on aging protective services plans.

(6) The development and maintenance of an ongoing program of public information and education to promote general awareness of and informed responses to the needs of older adults for protective services available under this chapter.

(7) Ongoing coordination with State agencies.

(b) *Local protective services plans*. The Department will review the annual protective services plan submitted under § 15.12(b) by an area agency on aging and will notify the area agency of approval or disapproval within 60 days.

(c) *Staff training and experience*. The minimum standards of training and experience of protective services staff employed to carry out activities under this chapter are set forth in §§ 15.121—15.127 (relating to staff training and experience standards).

(d) *Public information and education*. The Department will develop and maintain a campaign of public information and education about the needs for and availability of protective services under this chapter. The target of this campaign will be older adults and the general public, as well as professionals and others employed in situations where they are likely to have frequent contact with older adults who need protective services. In designing and implementing the ongoing public awareness campaign, the Department will consult with other Commonwealth agencies and consider the concerns of area agencies on aging and the local entities identified by area agencies as having substantial contact with potential victims or perpetrators of abuse, neglect, exploitation and abandonment.

Source

The provisions of this § 15.11 amended May 17, 2002, effective May 18, 2002, 32 Pa.B. 2412. Immediately preceding text appears at serial pages (228893) to (228894).

§ 15.12. Administrative functions and responsibilities of area agencies on aging.

(a) *General responsibilities.* An area agency on aging shall administer the delivery of protective services under this chapter in its planning and service area. The functions and responsibilities of the area agency on aging in administering protective services include the following:

(1) The development and submission of a protective services plan under subsection (b).

(2) The oversight of the delivery of protective services for older adults, either directly or purchased under contract with another agency, in compliance with the area agency's approved protective services plan, this chapter and other applicable State and Federal regulations or statutes. The plan shall assure that the agency will provide for the receipt of reports of need for protective services, the conduct of investigations of reports, the assessment of need and the development of service plans throughout the period covered by the plan. The plan shall also describe sources for specific services that may be required by older adults who have been assessed as needing them, and policies pertaining to arranging for specific services if and when needs for specific services exceed supply.

(3) The coordination of the protective services related activities of local agencies and organizations having substantial contact with potential victims or perpetrators of abuse, neglect, exploitation and abandonment. These agencies and organizations include the following:

(i) Local domestic violence agencies.

(ii) County assistance offices.

(iii) Local mental health/mental retardation programs.

(iv) County offices of children and youth.

(v) Law enforcement agencies.

(vi) Legal services agencies.

(vii) Emergency medical service agencies, hospital emergency rooms and social services staff.

(viii) Home health agencies.

(ix) Drug and alcohol prevention and treatment organizations.

(x) Clergy associations and councils of churches.

(4) The local extension of the Department's ongoing campaign of public information and education about the need for, and availability of, protective services for older adults.

(5) The collection and submission to the Department of data on protective services activities. The data shall be recorded and reports submitted as required by the Department. At a minimum, the following information shall be included:

(i) The number of substantiated and unsubstantiated reports.

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(ii) The number of reports made in various categories of need for protective services, such as physical abuse, financial exploitation, neglect, abandonment and the like.

(iii) The demographic information on persons reported to be in need of protective services and on alleged perpetrators of abuse, neglect, exploitation and abandonment.

(iv) The origins of reports.

(v) The remedies and referrals.

(b) *Protective services plan.* The area agency on aging shall submit, on an annual basis, its protective services plan to the Department. The protective services plan shall contain, at a minimum, the following information:

(1) An explanation of the organizational structure and staffing of the area agency's protective services functions, including provisions for purchasing these services if applicable. For the purpose of advising the agency on medically related issues encountered during assessment and the development of service plans, the organizational structure shall include the consultation services of a registered nurse or physician licensed to practice in this Commonwealth.

(2) An explanation of how the area agency's organizational structure and staffing of protective services will prevent a conflict of interest between the investigation of reports received under this chapter and the area agency's service delivery functions. The explanation shall include assurances that the minimum criteria required under § 15.13 (relating to organization and structure of protective services functions) will be met.

(3) A description of the local process for delivering protective services to older adults who need them, including the 24-hour capability to receive reports, the investigation of reports and the necessary actions arising from investigations. The description shall focus on the specific local methodology to be implemented in activities for which this chapter allows for local differences and flexibility. The description of the plan for investigating reports shall include an explanation of steps to be taken to assure the standby capability required under § 15.41(c) (relating to reports required to be investigated). The description of the plan for seeking emergency court orders shall include the agency's identification of the providers of legal assistance who may be notified under § 15.71(b) (relating to involuntary intervention by emergency court order) when the agency petitions the court for emergency involuntary intervention.

(4) A description of local funding for protective services which has, at the discretion of a county or local agency, been placed under the administrative control of the area agency on aging. There is no requirement by the Department that the area agency on aging obtain local funding for its protective services plan budget.

(5) Documentation of applicable interagency relations, interagency agreements, service referral mechanisms and the locus of responsibility for cases with multi-service needs. The documentation shall include assurances that the

area agency on aging has taken steps to avoid unnecessary duplication of existing efforts by other agencies which may carry responsibilities for some protective services activities.

(6) A description of local methods to be used to assure the privacy and confidentiality of older adults receiving protective services as required under §§ 15.101—15.105 (relating to confidentiality).

(7) A list of the entities, public and private, identified by the area agency on aging as having substantial contact with potential victims or perpetrators of abuse, neglect, exploitation and abandonment.

(c) *Public awareness.* The area agency on aging shall conduct within its planning and service area an ongoing campaign designed to inform and educate older adults, professionals and the general public about the need for and availability of protective services under this chapter. This ongoing campaign shall utilize materials and methodology developed by the Department and supplemented by the area agency with relevant information on the local protective services system. Special emphasis shall be placed on informing the community on how to make reports and request services.

(d) *Department approval required.* An area agency on aging, which has not received the Department's approval for its protective services plan may not provide services under this chapter.

Source

The provisions of this § 15.12 amended May 17, 2002, effective May 18, 2002, 32 Pa.B. 2412. Immediately preceding text appears at serial pages (228894) to (228897).

Cross References

This section cited in 6 Pa. Code § 15.11 (relating to administrative functions and responsibilities of the Department); 6 Pa. Code § 15.102 (relating to maintenance of case files); and 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act).

§ 15.13. Organization and structure of protective services functions.

(a) *General organization.* The area agency on aging may provide protective services directly or under a purchase of services contract with another provider agency. In either case, the area agency on aging is responsible for the compliance of protective services activities with this chapter. The area agency on aging shall assure that the agency meets the minimum standards of organization and structure set forth in this section.

(b) *Protective services caseworkers.*

(1) The agency shall designate as a protective services caseworker at least one caseworker who meets the minimum standards in §§ 15.121—15.127 (relating to staff training and experience standards).

(2) The agency shall assign protective services cases to designated protective services caseworkers by allocating the anticipated agency caseload in a manner consistent with the agency's plan for caseload distribution.

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(3) The agency's plan for caseload distribution shall be described in the agency's protective services plan and shall include the following specific information:

(i) The rationale for the proposed caseload distribution.

(ii) How the subset of workers will be defined and selected, including an estimate of the anticipated caseload size to be assigned to each designated protective services caseworker.

(iii) How the cases within a designated protective services caseworker's caseload will be prioritized.

(iv) How that prioritization system will be maintained.

(v) How the agency will develop and maintain the necessary specialized expertise required to fulfill protective services responsibilities.

(4) A protective services caseworker may not serve as the area agency on aging ombudsman on the same case.

(5) The protective services caseload assigned to a protective services caseworker may not be planned to exceed 30 ongoing protective services cases.

(6) The case assignment system of the agency shall encourage the appropriate transfer of cases into and out of protective services caseloads as provided under § 15.96 (relating to termination of protective services).

(c) *Other staff.* The immediate supervisor of a protective services caseworker is required to be trained as set forth in §§ 15.121—15.127. An intake worker of the agency is permitted to discharge nonprotective service duties. An intake worker who receives a report of the need for protective services shall receive training as set forth in §§ 15.121—15.127.

(d) *Conflict of interest.* The area agency on aging shall describe in its protective services plan the steps it will take to avoid or minimize the potential of a conflict of interest between the investigative and service delivery functions in the protective services caseload. The description shall identify points in the organization and structure of protective services delivery where a potential conflict of interest may exist and explain the specific organizational responses which the area agency on aging will make to avoid or minimize that potential. The responses may include provisions for assuring some separation between the investigative and service delivery functions. The description shall also include proposed steps for addressing an actual conflict of interest if one arises. Nothing in this chapter constitutes an absolute bar to an area agency from delivering protective services and other area agency on aging services itself or through the same provider solely because of the potential existence of a conflict of interest.

(e) *Depth of agency capacity.* The agency shall require sufficient staff of all categories to be trained under §§ 15.121—15.127 to insure that routine staff absences will not compromise the agency's ability to fulfill its responsibilities under the act. Trained standby staff members shall be available to provide protective services as required, but are not required to be regularly assigned to protective services duties.

Source

The provisions of this § 15.13 amended May 17, 2002, effective May 18, 2002, 32 Pa.B. 2412. Immediately preceding text appears at serial pages (228897) to (228899).

Cross References

This section cited in 6 Pa. Code § 15.2 (relating to definitions); and 6 Pa. Code § 15.12 (relating to administrative functions and responsibilities of area agencies on aging).

REPORTING SUSPECTED ABUSE, NEGLECT, ABANDONMENT OR EXPLOITATION

§ 15.21. General reporting provisions.

(a) A person who has reasonable cause to believe that an older adult needs protective services may report this to the local provider of protective services. An area agency on aging shall publicize, on an ongoing basis, the name, address and phone number of the agency where reports are to be made.

(b) When applicable, reports shall comply with §§ 15.151—15.157 (relating to reporting suspected abuse).

Source

The provisions of this § 15.21 amended May 17, 2002, effective May 18, 2002, 32 Pa.B. 2412. Immediately preceding text appears at serial page (228899).

Cross References

This section cited in 55 Pa. Code § 2600.15 (relating to abuse reporting covered by law).

§ 15.22. Safeguards for those who make or receive reports.

(a) *Protection from retaliation.* Under the act, a person or entity who takes discriminatory, retaliatory or disciplinary action against an employee or other person who makes a report, against a person who cooperates with the agency or the Department to provide testimony or other information about a report, or against a victim of abuse, commits a violation of the act. The person who takes the discriminatory, retaliatory or disciplinary action is subject to a civil lawsuit by the person who made the report, the victim of abuse named in the report, or the person who cooperated with the agency or the Department. If the court which hears the lawsuit decides in favor of the plaintiff, the plaintiff shall recover triple compensatory damages, compensatory and punitive damages or $5,000, whichever is greater, from the person or entity which committed the violation.

(b) *Immunity from liability.* As provided under the act, a person who participates in the making of a report or completion of an investigation or who provides testimony in an administrative or judicial proceeding arising out of a report shall be immune from civil or criminal liability because of these actions unless the person acted in bad faith or with malicious purpose. The act does not extend this

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immunity to liability for acts of abuse, neglect, exploitation or abandonment, even if the acts are the subject of the report or testimony.

(c) *Intimidation; penalty.* Any person, including the victim, with knowledge sufficient to justify making a report or cooperating with the agency, including possibly providing testimony in any administrative or judicial proceeding, shall be free from any intimidation by an employer or by any other person or entity. Any person who violates this subsection is subject to civil lawsuit by the person intimidated or the victim wherein the person intimidated or the victim shall recover treble compensatory damages, compensatory and punitive damages or $5,000, whichever is greater.

(d) *Notification.* The administrator of a facility shall post notices in conspicuous and accessible locations and use other appropriate means to notify employees, residents and other individuals of protections and obligations under the act, and keep them informed of the protections and obligations.

Source

The provisions of this § 15.22 amended May 17, 2002, effective May 18, 2002, 32 Pa.B. 2412. Immediately preceding text appears at serial page (228899).

Cross References

This section cited in 55 Pa. Code § 2600.15 (relating to abuse reporting covered law).

§ 15.23. Receiving reports; general agency responsibility.

(a) *Twenty-four hour capability.* The agency shall be capable of receiving reports of older adults in need of protective services 24-hours-a-day, 7 days-a-week-including holidays. This capability may include the use of a local emergency response system or a crisis intervention agency.

(b) *Accessibility of professional staff.* Regardless of the arrangements made by the agency to receive reports outside the normal business hours of the agency, the agency shall provide 24-hours-a-day, 7 days-a-week—including holidays-accessibility to a protective services caseworker by a person receiving reports so that referrals required under § 15.26(b) (relating to screening and referral of reports received) may be made for immediate attention. If this accessibility is provided by means of telephone, telephone paging device or other alternatives to direct physical presence, the protective services caseworker shall be capable of returning the call within 30 minutes.

(c) *Toll-free public telephone access.* To facilitate reporting of older adults in need of protective services, the agency shall provide toll-free telephone access to persons residing in the planning and service area served by the agency. If possible, the agency shall utilize the same telephone number everywhere in the planning and service area at all times. This number shall be extensively publicized throughout the planning and service area with special emphasis on older adults

and persons likely to be in contact with victims or perpetrators of abuse, neglect, exploitation and abandonment.

(d) *Reports from outside the planning and service area.* The agency shall receive all reports made regardless of their place of origin or the location in this Commonwealth of the older adult in need of protective services. If the older adult who is the subject of a report does not reside in the planning and service area of the agency or, at that time, is not in the planning and service area, the agency shall notify the agency which provides protective services in the planning and service area where the older adult is located and relay to that agency the information received in the report.

Source

The provisions of this § 15.23 amended May 17, 2002, effective May 18, 2002, 32 Pa.B. 2412. Immediately preceding text appears at serial pages (228899) to (228900).

Cross References

This section cited in 6 Pa. Code § 15.2 (relating to definitions); 6 Pa. Code § 15.26 (relating to screening and referral of reports received); 6 Pa. Code § 15.41 (relating to reports required to be investigated); 6 Pa. Code § 15.44 (relating to resolution of substantiated reports); 6 Pa. Code § 15.105 (relating to limited access to records and disclosure of information); and 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act); and 55 Pa. Code § 2600.15 (relating to abuse reporting covered by law).

§ 15.24. Receiving reports; agency intake process.

(a) *Personnel who may receive reports.* A report shall be received only by persons who have received training on the minimum requirements and procedures for receiving, recording, screening and referring reports under § 15.124 (relating to protective services intake training curriculum). When the agency uses an answering service to receive calls from persons reporting a need for protective services, the agency shall have one of the following options:

(1) To provide the training for intake workers required under § 15.124 to appropriate staff of the answering service organization.

(2) To provide that all calls are forwarded directly to designated protective services intake workers or caseworkers of the agency for completion of a report of need form.

(b) *Anonymity for reporters.* A person who reports an older adult in need of protective services may remain anonymous, if desired. In an attempt to secure the reporter's name if additional information or assistance is needed for investigation or service provision, a person who receives a report shall inform an anonymous reporter of the statutory protection from retaliation and liability.

Source

The provisions of this § 15.24 amended May 17, 2002, effective May 18, 2002, 32 Pa.B. 2412. Immediately preceding text appears at serial page (228900).

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Cross References

This section cited in 55 Pa. Code § 2600.15 (relating to abuse covered by law).

§ 15.25. Report form and content.

(a) *Standardized reports.* An initial report received shall be committed to writing on the standardized report form required by the Department. Information subsequently obtained through investigations may be reported on other forms or sheets of paper for inclusion in the case record.

(b) *Handling oral reports.* A report may be received in writing or orally. A report received orally shall be committed immediately to writing on the standardized form.

(c) *Minimum contents.* The person receiving a report shall make every effort to obtain information necessary to complete the standardized report form. At a minimum, the completed report shall contain the following information:

(1) The date and time of the report.

(2) The name, address and phone number of the person making the report, unless withheld.

(3) The name, address and, if available, age and phone number of the person reported to need protective services.

(4) The nature of the incident which precipitated the report.

(5) The nature and extent of the need for protective services. Indicate if the person is in a life threatening situation.

(6) The physical and mental status of the person in need, to the extent obtainable.

Source

The provisions of this § 15.25 amended May 17, 2002, effective May 18, 2002, 32 Pa.B. 2412. Immediately preceding text appears at serial page (228901).

Cross References

This section cited in 55 Pa. Code § 2600.15 (relating to abuse covered by law).

§ 15.26. Screening and referral of reports received.

(a) *Screening.* A person meeting the qualifications in § 15.121(c)(3) (relating to protective services staff qualifications) who receives a report shall screen the report during and immediately following receipt of the report to assign it to one of the following referral categories:

(1) Emergency.

(2) Priority.

(3) Nonpriority.

(4) Another planning and service area.

(5) No need for protective services.

(b) *Referral categories and actions.*

(1) *Emergency.* A report placed in this category requires immediate attention because specific details in the report indicate the possibility that the older adult reported to need protective services is at imminent risk of death or serious physical harm. The person receiving an emergency report shall immediately contact a protective services caseworker designated under § 15.23(b) (relating to receiving reports; general agency responsibility) and provide that caseworker with the information contained in the report.

(2) *Priority.* A report placed in this category contains details which clearly suggest that the need for protective services is serious enough to require early intervention. The person receiving a priority report shall immediately contact a protective services caseworker designated under § 15.23(b) and provide that caseworker with the information in the report.

(3) *Nonpriority.* A report shall be placed in this category when it does not appropriately fall within the emergency or priority categories and, therefore, does not require immediate attention by the agency. A report in this category shall be referred to a protective services caseworker of the agency within the normal business hours of the agency's current or next day of business under the agency's established procedures for referring these reports.

(4) *Another planning and service area.* A report which is covered under § 15.23(d) shall be placed in this category. It shall be referred to the agency which has the designated responsibility for protective services in the planning and service area in which the older adult reported to need protective services is located at the time of the report. A report in this category will also meet the criteria for placement in one of the other categories in this subsection. The provisions for referral for the other category shall apply to a referral to another planning and service area.

(5) *No need for protective services.*

(i) A report shall be placed in this category when the person reported to be in need of protective services meets one or more of the following criteria:

(A) Is under 60 years of age.

(B) Has the capacity to perform or obtain, without help, services necessary to maintain physical or mental health.

(C) Has a responsible caretaker at the time of the report.

(D) Is not at imminent risk of danger to his person or property.

(ii) A report in this category shall be referred to a protective services caseworker of the agency within the normal business hours of the agency's current or next day of business. The protective services caseworker shall review the details of the report and take whatever steps necessary to confirm or reject the categorization of no need for protective services. If the caseworker confirms the screening categorization, appropriate referrals shall be made to the area agency on aging care management system or, if concerning an adult under 60 years of age, to another community agency. If the case-

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worker rejects the categorization, the report shall be placed in the appropriate category and be handled accordingly.

(iii) A report may not be placed in this category if the older adult is temporarily relocated to a safe environment and will return to the original abusive situation or to a new location which has not been determined to be safe.

Source

The provisions of this § 15.26 amended May 17, 2002, effective May 18, 2002, 32 Pa.B. 2412. Immediately preceding text appears at serial pages (228901) to (228902).

Cross References

This section cited in 6 Pa. Code § 15.23 (relating to receiving reports; general agency responsibility); 6 Pa. Code § 15.27 (relating to handling of completed reports); 6 Pa. Code § 15.41 (relating to reports required to be investigated); and 55 Pa. Code § 2600.15 (relating to abuse covered by law).

§ 15.27. Handling of completed reports.

(a) *Reports to be signed.* Completed report forms shall be signed by the person who received the report.

(b) *Appropriate routing of reports.* A completed report form shall be promptly routed to appropriate staff of the agency under § 15.26(b) (relating to screening and referral of reports received), and shall be handled in a manner which safeguards the confidentiality of information contained in the report. Sections 15.103 and 15.104 (relating to responsibilities of staff with access to confidential information; and penalties for violation of confidentiality requirements) also apply to staff of an emergency response agency under contract with the agency to receive reports during times when the agency is not open for business.

(c) *State licensed facility.* A report involving a State-licensed facility, and containing sufficient information to begin an investigation, shall be provided to the appropriate State licensing agency.

Source

The provisions of this § 15.27 amended May 17, 2002, effective May 18, 2002, 32 Pa.B. 2412. Immediately preceding text appears at serial pages (228902) to (228903).

Cross References

This section cited in 55 Pa. Code § 2600.15 (relating to abuse reporting covered by law).

INVESTIGATING REPORTS OF NEED FOR PROTECTIVE SERVICES

§ 15.41. Reports required to be investigated.

(a) *General.* The agency shall provide for an investigation of a report received under § 15.23 (relating to receiving reports; general agency responsibility) and referred under § 15.26 (relating to screening and referral of reports

received) to determine if the report can be substantiated and, if so, immediate steps that are necessary to remove or reduce an imminent risk to person or property. The investigation shall be initiated within 72 hours following the receipt of a report or sooner as provided under § 15.42 (relating to standards for initiating and conducting investigations) and include sufficient collateral information provided by interviews, documents, reports or other methods to determine if the older adult is in need of protective services. When applicable, reports and investigations shall comply with §§ 15.141—15.147 (relating to criminal history record information reports).

(b) *Trained and identified investigators.* Only a person who has completed the minimum training required for protective services caseworkers by the Department under §§ 15.121—15.127 (relating to staff training and experience standards) may conduct investigations under this section. When, for reasons unexpected and beyond the agency's control, a trained staff person is not available to conduct investigations, the agency shall notify the Department and seek the Department's approval for its proposed plan for carrying out its investigation responsibilities under this section. The agency shall provide each investigator with official credentials which document the identity of the investigator and the legal authority to implement this chapter.

(c) *Agency responsibility.* The agency is responsible for assuring that an investigation under this section can be conducted whenever circumstances require it. This responsibility includes the provision of standby capability for use if the agency's regularly assigned staff is not available.

Source

The provisions of this § 15.41 amended May 17, 2002, effective May 18, 2002, 32 Pa.B. 2412. Immediately preceding text appears at serial page (228903).

Cross References

This section cited in 6 Pa. Code § 15.12 (relating to administrative functions and responsibilities of area agencies on aging); 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act); and 6 Pa. Code § 15.155 (relating to investigation).

§ 15.42. Standards for initiating and conducting investigations.

(a) *Requirements by report category.*

(1) *Emergency report.*

(i) The investigation of a report categorized as emergency shall be initiated immediately following the referral of the report. The protective services caseworker shall make every attempt to ensure the immediate safety of the older adult and to conduct a face to face visit as soon as possible. The agency shall assure that reasonable attempts will be made to conduct a face to face visit within 24 hours after the report is received.

(ii) When, after reasonable efforts to gain access to the older adult, the protective services caseworker is denied access, the caseworker shall docu-

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ment the efforts made and take action, as appropriate, under § 15.61 or § 15.71 (relating to access to persons; and involuntary intervention by emergency court order).

(2) *Priority report.* The investigation of a report categorized as priority shall be initiated as soon as possible. The agency shall assure that reasonable attempts to initiate the investigation will be made within 24 hours after the report is received. The investigation of a priority report is initiated only by contact with the older adult reported to need protective services. The protective services caseworker shall make every attempt to visit with the older adult face to face within the 24 hours provided. When, after reasonable efforts to gain access to the older adult, the caseworker is denied access, the caseworker shall document the efforts made and take action, as appropriate, under § 15.61 or § 15.71.

(3) *Nonpriority report.*

(i) The investigation of a report categorized as nonpriority shall be initiated in a timely manner but never later than 72 hours after the report was received. At the discretion of the agency, the initiation of an investigation of

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a nonpriority report shall include a visit to the older adult reported to need protective services when details in the report indicate a need to see and talk with the older adult face to face to secure or verify facts essential to the ongoing investigation.

(ii) The investigation of a report categorized as nonpriority shall include at least one visit to the older adult reported to need protective services at an appropriate point in the course of the investigation. Every attempt shall be made to visit with the older adult face to face. When, after reasonable efforts to gain access to the older adult, the protective services caseworker is denied access, the caseworker shall document the efforts made and, when appropriate, take action under § 15.61 or § 15.71.

(4) *No need report.* The investigation of a report categorized as no need for protective services shall consist of the protective services caseworker's review of the report categorization. If the caseworker agrees with the initial categorization, appropriate referrals shall be made within 72 hours after the report was received, to the area agency on aging service management system or, if concerning an adult under 60 years of age to another community agency, if available. If the caseworker does not agree with the initial categorization, the report shall be placed in another category in this subsection and addressed under the applicable provisions for investigating a report in that category.

(b) *Reports involving county or area agency on aging employees.* If the agency is required to investigate a report which alleges that abuse, neglect, exploitation or abandonment has been perpetrated by an employee of the county, the area agency on aging or its subcontractor, the agency shall notify the Department as early as possible during the current or next day of normal business hours. The notification shall be made by phone to a person designated by the Department and shall include the pertinent details of the report. A copy of the completed report of need shall be immediately forwarded by mail to the Department. Copies of written records of investigative activities shall also be forwarded to the Department for review. The Department reserves the right to intervene in the agency's investigation of a report under this subsection if it is determined appropriate to assure a fully objective investigation.

(c) *Written records of investigative activities.* The investigative activities, including home visits and other contacts with the older adult or other persons or organizations needed to facilitate the investigation, shall be documented in writing and placed in the case record. Documentation may include dated and signed photographs and statements related to suspected abuse.

(d) *Completing investigations of reports.* The agency shall make all reasonable efforts to complete an investigation of a report of need for protective services under this section as soon as possible and, in cases of abuse and neglect, at least within 20 days of the receipt of the report. The investigation of the report is completed only when the report has been determined to be substantiated or unsub-

stantiated and, if substantiated, after necessary steps have been taken to reduce an imminent risk to the older adult's person or property.

(e) *Department conducting its own investigation*. If the Department determines that an agency is unable to conduct, or has not conducted, what the Department considers an acceptable protective services investigation, the Department may intervene in the agency's investigation, or conduct its own investigation.

Source

The provisions of this § 15.42 amended May 17, 2002, effective May 18, 2002, 32 Pa.B. 2412. Immediately preceding text appears at serial pages (228904) to (228905).

Cross References

This section cited in 6 Pa. Code § 15.41 (relating to reports required to be investigated); 6 Pa. Code § 15.45 (relating to situations involving State-licensed facilities); 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act); and 6 Pa. Code § 15.155 (relating to investigation).

§ 15.43. Resolution of unsubstantiated reports.

(a) When, upon investigation of a report, it is determined that there is no need for protective services, the report shall be classified as unsubstantiated.

(b) A case opened by an unsubstantiated report shall be closed and information identifying the person who made the report and the alleged perpetrator of abuse, if applicable, shall be immediately deleted from the case record.

(c) For the purposes of substantiating a pattern of abuse, neglect, exploitation or abandonment, the name of the person reported to need protective services and other information relevant to the circumstances which led to the report may be maintained for 6 months in a separate locked file accessible only to limited authorized staff for review when it is necessary to establish that a previous report was made. At the end of 6 months, case records maintained under this subsection shall be destroyed unless additional reports lead to their being reopened.

(d) When an older adult who is the subject of an unsubstantiated report has needs for other services, the older adult shall be informed of the availability of services through the area agency on aging service management system or another appropriate community agency.

Source

The provisions of this § 15.43 amended May 17, 2002, effective May 18, 2002, 32 Pa.B. 2412. Immediately preceding text appears at serial pages (228905) to (228906).

Cross References

This section cited in 6 Pa. Code § 15.102 (relating to maintenance of case files); 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act); and 6 Pa. Code § 15.155 (relating to investigation).

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§ 15.44. Resolution of substantiated reports.

(a) When an investigation confirms the details of a report made under § 15.23 (relating to receiving reports; general agency responsibility) or determines that the subject of the report is an older adult in need of protective services, the report shall be classified as substantiated.

(b) The agency shall provide for a timely assessment of the need for protective services by the older adult who is the subject of a substantiated report if the older adult gives informed consent to an assessment. If an older adult found to need protective services does not consent to an assessment, the agency may seek, when appropriate, a court order under § 15.61 (relating to access to persons).

(c) On the basis of the assessment, the agency shall provide for the development of a service plan of recommended actions which reflect the least restrictive alternatives for removing or reducing imminent risk to person or property and promote self-determination and continuity of care being provided at the time of the agency's intervention. The service plan may include, when appropriate, the pursuit of civil or criminal remedies.

(d) Developed service plans shall be put into effect under § 15.94 (relating to service delivery).

Source

The provisions of this § 15.44 amended May 17, 2002, effective May 18, 2002, 32 Pa.B. 2412. Immediately preceding text appears at serial page (228906).

Cross References

This section cited in 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act); and 6 Pa. Code § 15.155 (relating to investigation).

§ 15.45. Situations involving State-licensed facilities.

(a) *General.* The following apply to investigations of reports concerning older adults who reside in State-licensed facilities:

(1) The agency continues to maintain its general responsibility for protective services when a licensing agency assumes the role of investigating a report received by the agency.

(2) The response times provided in § 15.42(a) (relating to standards for initiating and conducting investigations) for initiating investigations of reports apply to initiating investigations of reports under this section. The initiation of the investigation under subsection (c) is accomplished by the referral of the report to the appropriate administrative office.

(3) The supervisor of a protective services caseworker who initiates an investigation under this section shall be informed during the current day or next day of normal agency operating hours concerning the report and shall consult frequently with the caseworker about the progress and findings of the investigation.

(4) The agency shall notify the area agency on aging ombudsman of reports and investigations concerning older adults residing in State licensed facilities for which the area agency on aging provides ombudsman services. In situations that ombudsman services, as established by section 712(g) of the Older Americans Act of 1965 (42 U.S.C.A. § 3058g) and section 2207-A of The Administrative Code of 1929 (71 P. S. § 581-7(d)), are determined to be appropriate, the agency shall request those services from the ombudsman.

(b) *Agency coordination with the licensing agency.*

(1) Except as provided under subsection (c), the agency shall notify the appropriate licensing agency under procedures developed by the Department, in consultation with the licensing agency

(i) Notification shall identify the facility, the older adult and the nature of the report.

(ii) Notification shall be made immediately by telephone or facsimile to the appropriate field office of the Department of Health that an investigation has been initiated in a facility licensed by the Department of Health.

(iii) Notification shall be made immediately by telephone or facsimile to the appropriate field office or central office of the Department of Public Welfare that an investigation has been initiated in a facility licensed by the Department of Public Welfare.

(2) During the course of the investigation, the agency shall coordinate its investigative activities and findings with the licensing agency to avoid duplication of effort and to foster jointly developed remedies to situations requiring protective services intervention.

(c) *State-operated mental health and mental retardation facilities.* If the agency receives a report concerning an older adult who resides in a facility operated by the Department of Public Welfare under its Office of Mental Health or its Office of Mental Retardation, the agency shall provide for an investigation of that report as follows:

(1) The protective services caseworker or investigator to whom the report is referred shall initiate the investigation by referring the report to the appropriate administrative office under procedures jointly developed by the Department and the Department of Public Welfare for investigation under their patient rights program. The jointly developed procedures provide for specific points of contact between the agency and the Department of Public Welfare and establish a system which assures that the agency will be kept fully informed of the activities, findings and results of investigations through written records of the investigative activities and remedial actions as they develop.

(2) The agency shall closely monitor an investigation referred under paragraph (1) to determine that the investigation is effectively implemented and that appropriate remedies have been effected to correct the situation which led to the making of the report. The referral of an investigation to the Office of Mental Health or Office of Mental Retardation does not relieve the agency of its

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mandated authority and responsibility to provide protective services. If the agency determines that an older adult's need for protective services is not adequately being met under paragraph (1), the agency shall intervene and conduct its own investigation.

Source

The provisions of this § 15.45 amended May 17, 2002, effective May 18, 2002, 32 Pa.B. 2412. Immediately preceding text appears at serial pages (228906) to (228908).

Cross References

This section cited in 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act); and 6 Pa. Code § 15.155 (relating to investigation).

§ 15.46. Law enforcement agencies as available resources.

(a) *General.* This chapter may not be interpreted to deny an older adult who needs protective services access to the normal protections available from the police and other law enforcement agencies as appropriate.

(b) *Interagency coordination.* To facilitate the cooperation of law enforcement officials with the provision of protective services when necessary, the agency shall fulfill the following minimum coordinating activities:

(1) Achieve specific coordination objectives with:

(i) Police departments in the planning and service area.

(ii) The district attorney's office.

(iii) State Police field installations for the planning and service area.

(iv) Officials of the court system.

(v) Legal assistance agencies.

(2) Establish designated points of contact with law enforcement agencies to facilitate access when necessary.

(3) Establish basic procedures to be followed when the agency makes reports of criminal conduct or requests for special assistance to law enforcement agencies and when the law enforcement agencies report the need for protective services to the agency.

(4) Provide for the necessary exchange of information about protective services for older adults and the role of law enforcement in the provision of those services.

(c) *The role of law enforcement in protective services.* The agency's protective services workers shall receive training as required under §§ 15.121—15.127 (relating to staff training and experience standards) in applicable sections of the criminal code and the role of law enforcement officials when criminal conduct is encountered or suspected.

(d) *Legal options information.* The agency shall take steps to inform older adults who need protective services of the various legal options, civil or criminal, available through appropriate agencies as possible remedies to situations of risk to person or property. If an older adult reported to need protective services

requests the agency to contact a law enforcement agency, the agency shall respond to that request in an appropriate and timely manner.

(e) *Police assistance to protective services worker.* A protective services worker may, as appropriate, request the assistance of a police officer when investigating a report which indicates a possible danger to the worker. As provided under § 15.74 (relating to forcible entry), forcible entry may be made only by a police officer or State Trooper accompanied by a representative of the agency after obtaining a court order.

(f) *Simultaneous investigation.* When both a report of need for protective services and a police report have been filed, the protective services investigation shall continue simultaneously with the police investigation. The agency may take steps to coordinate its investigation with the police investigation and the investigation of the State licensing agency and shall make available as provided under § 15.105 (relating to limited access to records and disclosure of information) relevant information from the case record.

(g) *Report of death.* If the death of an older adult reported to need protective services occurs prior to the agency's investigation of the report, during the investigation or at any time prior to the closure of the protective services case, when there is some nexus between the death and the need for protective services, the agency shall immediately report that death to the police and the county coroner.

Source

The provisions of this § 15.46 amended May 17, 2002, effective May 18, 2002, 32 Pa.B. 2412. Immediately preceding text appears at serial pages (228908) to (208909).

Cross References

This section cited in 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act); and 6 Pa. Code § 15.155 (relating to investigation).

§ 15.47. Emergency medical services as available resources.

This chapter may not be interpreted to deny an older adult who needs protective services access to the normal protections of the emergency medical services that would be available to anyone, regardless of age, in similar circumstances.

Cross References

This section cited in 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act); and 6 Pa. Code § 15.155 (relating to investigation).

AGENCY ACCESS TO PERSONS AND RECORDS

§ 15.61. Access to older adults.

(a) *Access assured by law.* The agency shall have access to older adults who have been reported to need protective services to:

(1) Investigate reports received under this chapter.

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(2) Assess the older adult's need and develop a service plan for addressing determined needs.

(3) Provide for the delivery of services by the agency or other service provider arranged for under the service plan developed by the agency.

(b) *Access to older adults.* Except in emergency or priority protective services cases, access to older adults shall be between the hours of 7 a.m. and 9 p.m.

(c) *When access is denied.* If the agency is denied access to an older adult reported to need protective services and access is necessary to complete the investigation or the assessment and service plan, or the delivery of needed services to prevent further abuse, neglect, exploitation or abandonment of the older adult reported to need protective services, the protective services caseworker shall make reasonable efforts to clearly inform the party denying access of the legal authority for access in section 304 of the act (35 P. S. § 10225.304) and the available recourse through a court order. If the party continues to deny the agency access to the older adult, the agency may petition the court for an order to require the appropriate access when one of the following conditions applies:

(1) The caretaker or a third party has interfered with the completion of the investigation, the assessment and service plan or the delivery of services.

(2) The agency can demonstrate that the older adult reported to need protective services is denying access because of coercion, extortion or justifiable fear of future abuse, neglect, or exploitation or abandonment.

Source

The provisions of this § 15.61 amended May 17, 2002, effective May 18, 2002, 32 Pa.B. 2412. Immediately preceding text appears at serial pages (228909) to (228910).

Cross References

This section cited in 6 Pa. Code § 15.42 (relating to standards for initiating and conducting investigations); 6 Pa. Code § 15.44 (relating to resolution of substantiated reports); 6 Pa. Code § 15.63 (relating to access by consent); 6 Pa. Code § 15.92 (relating to assessment); and 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act).

§ 15.62. Access to records.

(a) *Access assured by law.* The agency shall have access to records relevant to:

(1) Investigations of reports received under this chapter.

(2) The assessment of need and the development of a service plan when an older adult's need for protective services has been or is being established.

(3) The delivery of services arranged for under the service plan developed by the agency to respond to an older adult's assessed need for specific services.

(b) *Access to records.* Except in emergency or priority protective services cases, access to records shall be between the hours of 7 a.m. and 9 p.m.

(c) *When access to records is denied.* If the agency is denied access to records necessary for the completion of a proper investigation of a report or an

assessment and service plan, or the delivery of needed services to prevent further abuse, neglect, exploitation or abandonment of the older adult reported to need protective services, the protective services caseworker shall clearly inform the party denying access to the records of the legal authority for access as set forth in section 304 of the act (35 P. S. § 10225.304) by the agency and the available recourse through a court order. If the party continues to deny access to relevant records, the agency may petition the court of common pleas for an order requiring the appropriate access when one of the following conditions applies:

(1) The older adult has provided written consent for confidential records to be disclosed and the keeper of the records denies access.

(2) The agency is able to demonstrate that the older adult is denying access to records because of incompetence, coercion, extortion or justifiable fear of future abuse, neglect, exploitation or abandonment.

Source

The provisions of this § 15.62 amended May 17, 2002, effective May 18, 2002, 32 Pa.B. 2412. Immediately preceding text appears at serial pages (228910) to (228911).

Notes of Decisions

In General

The requirements of this regulation are inherently inconsistent with the ex parte procedure used to obtain search warrants, where the element of surprise is deemed necessary to prevent the destruction of evidence. *In the Interest of M. B.*, 686 A.2d 877 (Pa. Cmwlth. 1996).

Cross References

This section cited in 6 Pa. Code § 15.63 (relating to access by consent); and 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act).

§ 15.63. Access by consent.

The agency's access to confidential records held by other agencies or individuals and the agency's access to an older adult reported to need protective services shall require the consent of the older adult or a court-appointed guardian except as provided under § 15.61, § 15.62 or § 15.71 (relating to access to older adults; access to records; and involuntary intervention by emergency court order).

Cross References

This section cited in 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act).

EMERGENCY INTERVENTION

§ 15.71. Involuntary intervention by emergency court order.

(a) *General.* When there is clear and convincing evidence that, if protective services are not provided, the older adult to be protected is at imminent risk of death or serious physical harm, the agency may petition the court for an emer-

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gency order to provide the necessary services. The person to be protected shall be an older adult in need of protective services as defined in this chapter. The courts of common pleas of each judicial district shall ensure that a judge or district magistrate is available on a 24-hour-a-day, 365-day-a-year basis to accept and decide on petitions for an emergency court order under this section whenever the agency determines that delay until normal court hours would significantly increase the danger the older adult faces. Only the agency, through its official representative, may bring a petition for involuntary intervention by emergency court order.

(b) *Legal representation.* When the agency petitions the court for emergency involuntary intervention, the agency shall make sure the older adult has the opportunity to be represented by counsel at all stages of the proceedings. If the older adult has an attorney known to the agency, the agency shall attempt to notify that attorney before it files a petition for emergency involuntary intervention. If the agency has no knowledge of an attorney who represents the older adult, the agency shall attempt to notify the legal services provider identified by the area agency on aging in its protective services plan to provide legal assistance under this chapter. The notification shall contain enough information about the risk to the older adult and the proposed remedy to enable counsel to determine if representation is necessary at the emergency hearing. Notification to counsel shall include a copy of the petition with the affidavits attached as well as the time, date and place of presentation of the petition except when § 15.72(b) (relating to petition) applies.

Source

The provisions of this § 15.71 amended May 17, 2002, effective May 18, 2002, 32 Pa.B. 2412. Immediately preceding text appears at serial pages (228911) to (228912).

Cross References

This section cited in 6 Pa. Code § 15.12 (relating to administrative functions and responsibilities of area agencies on aging); 6 Pa. Code § 15.42 (relating to standards for initiating and conducting investigations); 6 Pa. Code § 15.63 (relating to access by consent); 6 Pa. Code § 15.73 (relating to court appointed counsel); 6 Pa. Code § 15.81 (relating to rights of protective services clients); 6 Pa. Code § 15.91 (relating to general); 6 Pa. Code § 15.92 (relating to assessment); 6 Pa. Code § 15.93 (relating to service plan); 6 Pa. Code § 15.94 (relating to service delivery); and 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act).

§ 15.72. Petition.

(a) *Contents.* The petition which the agency files for an emergency court order of involuntary intervention shall state the following information:

(1) The name, age and physical description of the older adult insofar as these facts have been ascertained.

(2) The address or other location where the older adult can be found.

(3) The name and relationship of a guardian, caregiver or other responsible party residing with the older adult, when applicable.

(4) A description of how the older adult is at imminent risk of death or serious physical harm.

(5) The physical and mental status of the older adult, to the extent known.

(6) The attempts made by the agency to obtain the informed consent of the older adult, or the older adult's court appointed guardian, when applicable, to the provision of protective services by the agency.

(7) The specific short-term, least restrictive, involuntary protective services which the agency is petitioning the court for an order to provide.

(8) A description of how the proposed services would remedy the situation or condition which presents an imminent risk of death or serious physical harm.

(9) A statement showing why the proposed services are not overbroad in extent or duration and why less restrictive alternatives as to their extent or duration are not adequate.

(10) A statement that other voluntary protective services have been offered, attempted or have failed to remedy the situation.

(11) A statement that reasonable efforts have been made to communicate with the older adult in a language the older adult understands in the case of an older adult who is hearing impaired or who does not understand the English language.

(12) Other relevant information deemed appropriate by the agency.

(b) *Oral petitions.* Nothing in this chapter precludes or prohibits the oral presentation of a petition for emergency involuntary intervention. When oral presentation is warranted, the written petition shall be prepared, filed and served on the older adult and counsel within 24 hours of the entry of the emergency order or on the next business day, when the 24-hour period would fall on a weekend or legal holiday.

(c) *Affidavits.* Allegations which are not based upon personal knowledge shall be supported by affidavits provided by persons having that knowledge. The affidavits shall be attached to the petition.

(d) *Emergency order duration.* In the petition, the agency shall request an emergency order of a specific duration which may not exceed 72 hours from the time the order is granted. The agency shall request the court of common pleas to hold a hearing when the initial emergency order expires to review the need for an additional emergency court order or other continued court and protective services involvement, or both. The issuance of an emergency order is not evidence of the competency or incompetency of the older adult.

Cross References

This section cited in 6 Pa. Code § 15.71 (relating to involuntary intervention by emergency court order); and 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act).

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§ 15.73. Court appointed counsel.

The act requires that an emergency order under this section provides that the older adult has the right to legal counsel. If no representation for the older adult is present at the time the emergency order is requested, the agency shall inform the court of its efforts to notify counsel under § 15.71(b) (relating to involuntary intervention by emergency court order). If the older adult is unable to provide for counsel, the court will appoint counsel as authorized by the act at the time the emergency order is entered to ensure that legal representation will be provided at the time of the emergency protective services review hearing.

Cross References

This section cited in 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act).

§ 15.74. Forcible entry.

When the agency requests a court order for forcible entry to the premises where an older adult at imminent risk of death or serious physical harm is located, the agency shall request the court to direct that a local or State police officer carry out the forcible entry accompanied by a representative of the agency.

Cross References

This section cited in 6 Pa. Code § 15.46 (relating to law enforcement agencies as available resources); and 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act).

§ 15.75. Health and safety requirements.

The agency shall take reasonable steps to assure protection of the older adult's dependents and property while the older adult is receiving services under an emergency court order. The agency is not responsible for the actual provision of all needed services but shall coordinate professional linkage referrals and follow-up to assure that the needed services and protections are being provided and maintained.

Cross References

This section cited in 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act).

§ 15.76. Documentation.

The agency shall document in the case record emergency intervention actions it takes.

INDIVIDUAL RIGHTS OF PARTIES INVOLVED

§ 15.81. Rights of protective services clients.

The agency shall observe the following minimum requirements to safeguard the rights of an older adult who is reported to need protective services:

(1) The agency shall discreetly notify the older adult during the investigation that a report of need for protective services has been made and shall provide the older adult with a brief summary of the nature of the report. The protective services caseworker performing the investigation shall determine when and how this notification is accomplished.

(2) If the older adult requests additional information contained in the record, the agency shall provide the information subject to the requirements in § 15.105 (relating to limited access to records and disclosure of information).

(3) A denial of services by the Department or an authorized agency under this chapter may be appealed under Chapter 3 (relating to fair hearings and appeals).

(4) Nothing in this chapter limits the rights of an older adult to file a petition under 23 Pa.C.S. Chapter 61 (relating to the Protection from Abuse Act).

(5) An older adult determined to need protective services has the right to refuse protective services except as provided under a court order. The agency shall obtain, when possible, the older adult's signed statement refusing protective services or document unsuccessful efforts to obtain a signed statement.

(6) An older adult has the right to legal counsel when the agency petitions the court for emergency or other orders to provide protective services without the older adult's consent. The act provides that if an older adult is unable to provide for counsel, counsel shall be appointed by the court. Under § 15.71 (relating to involuntary intervention by emergency court order), the agency is required to take steps to involve counsel when emergency petitions are filed.

(7) As provided under §§ 15.101—15.105 (relating to confidentiality), an older adult has the right to the confidentiality of information received and maintained by the agency in reports, investigations, service plans and other elements of a case record.

Source

The provisions of this § 15.81 amended May 17, 2002, effective May 18, 2002, 32 Pa.B. 2412. Immediately preceding text appears at serial pages (228914) to (228915).

§ 15.82. Rights of alleged abusers.

An individual who, as a result of a protective services investigation, is determined to be a perpetrator of the abuse, neglect, exploitation or abandonment of an older adult is entitled to the following if the report is substantiated by the agency:

(1) The agency shall notify the alleged perpetrator at the conclusion of the investigation of the report that allegations have been made and shall provide the alleged perpetrator with a brief summary of the allegations.

(2) As provided under § 15.105 (relating to limited access to records and disclosure of information), the alleged perpetrator may request, and the agency shall provide, additional information contained in the report.

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(3) An alleged perpetrator is entitled to file an appeal with the Department under 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) to challenge the agency's finding resulting from the investigation of a report made under this chapter. The agency's finding is that information, after an investigation is concluded, which substantiated the need for protective services. The appeal process applicable to older adults under Chapter 3 (relating to fair hearings and appeals) also applies to alleged perpetrators of abuse, neglect, exploitation or abandonment. This appeal shall be in writing to the Secretary and be postmarked within 30 days from the date of notification by the agency required under this section.

Source

The provisions of this § 15.82 amended May 17, 2002, effective May 18, 2002, 32 Pa.B. 2412. Immediately preceding text appears at serial page (228915).

PROVISION OF SERVICES

§ 15.91. General.

(a) *Protective services.* Protective services are activities, resources and supports provided to older adults under the act after the initiation of an investigation to prevent, reduce or eliminate abuse, neglect, exploitation and abandonment. Protective services activities include the following:

(1) Administering protective services plans.

(2) Receiving and maintaining records of reports of abuse.

(3) Conducting investigations of reported abuse.

(4) Conducting assessments and developing service plans.

(5) Petitioning the court.

(6) Providing emergency involuntary intervention.

(7) Arranging for available services needed to fulfill service plans, which may include, as appropriate, arranging for services for other household members to reduce, correct or eliminate abuse, neglect, exploitation or abandonment of an older adult. A partial listing of the services which may be made available to reduce, correct or eliminate abuse, neglect, exploitation or abandonment of an older adult is found in § 15.93(c) (relating to service plan).

(8) Purchasing, on a temporary basis, as provided under § 15.112 (relating to uses of funding authorized by the act), services determined by a service plan to be necessary to reduce, correct or eliminate abuse, neglect, exploitation or abandonment of an older adult when the services are not available within the existing resources of the agency or other appropriate provider.

(b) *Availability of protective services.* The agency shall offer protective services under one or more of the following conditions:

(1) An older adult requests the services.

(2) Another interested person requests the services on behalf of an older adult.

(3) If, after initiation of an investigation of a report, the agency determines the older adult needs the services.

(c) *Informed consent required.* The agency shall provide protective services only to older adults who give informed consent to the services. The consent shall be in writing when possible. If the older adult does not consent or, if after consenting, withdraws the consent, protective services may not be provided unless the provision of the services is allowable as a consent exemption.

(d) *Consent exemptions.* Protective services may be provided to older adults in need of protective services without consent only in the following situations:

(1) When ordered by a court under section 304 of the act (35 P. S. § 10225.304).

(2) When requested by an older adult's court-appointed guardian.

(3) When provided under § 15.71 (relating to involuntary intervention by emergency court order).

(e) *Interference with services.* If a person interferes with the provision of services or interferes with the right of an older adult to consent to the provision of services, the agency may petition the court for an order enjoining the interference.

Source

The provisions of this § 15.91 amended May 17, 2002, effective May 18, 2002, 32 Pa.B. 2412. Immediately preceding text appears at serial pages (228915) to (228916).

§ 15.92. Assessment.

(a) When a report is substantiated by the agency, or if an assessment is necessary to determine whether or not the report is substantiated, the agency shall, with the consent of the older adult, provide for a timely assessment. If the older adult does not consent, the agency may apply § 15.61 or § 15.71 (relating to access to persons; and involuntary intervention by emergency court order).

(b) The protective services caseworker shall make face-to-face contact with the older adult to evaluate and document information including the following:

(1) Personal appearance.

(2) Physical environment.

(3) Physical health.

(4) Mental functioning.

(5) Activities of daily living.

(6) Social environment.

(7) Economic status—including eligibility for public and private entitlements or resources as defined under § 15.2 (relating to definitions).

(8) Nutrition.

(9) Recent experiences—losses, separations, major changes in relationships or environments.

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(10) The need for a formal medical or psychiatric evaluation.

(c) The assessment shall be written and include, whenever possible, older adult-given information for each area of functioning.

(d) The assessment shall be written so that the reader can determine which information came from the older adult and which constitutes the worker's judgment.

(e) The assessment shall be written in a standard format as required by the Department. Data entries shall be based on commonly accepted and defined nomenclature to make the data more usable across and within agencies and to ensure that older adults are evaluated uniformly according to the standardized definitions.

Source

The provisions of this § 15.92 amended May 17, 2002, effective May 18, 2002, 32 Pa.B. 2412. Immediately preceding text appears at serial pages (228916) to (228917).

Cross References

This section cited in 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act).

§ 15.93. Service plan.

(a) Upon completion of the assessment and with the consent of the older adult, a service plan shall be prepared. The service plan shall be cooperatively developed by the agency staff, the older adult or his appointed guardian, and other family members, if appropriate. Protective services may not be provided under the act to an older adult who does not consent to the services or who, having consented, withdraws consent, unless the services are ordered by a court, requested by a court-appointed guardian of the older adult or provided under § 15.71 (relating to involuntary intervention by emergency court order).

(b) The service plan shall be in writing and shall include a recommended course of action which utilizes the least restrictive alternative, encourages self-determination and continuity of care. The recommended course of action may also include pursuit of civil or criminal remedies.

(c) The service plan shall describe the older adult's identified needs, the goals to be achieved, the specific services which will be used to support attainment of the goals and the procedures to be followed with regard to regular follow-up and assessment of progress. Specific services which may be used to implement the service plan include:

(1) Medical evaluations.

(2) Psychiatric or psychological evaluations.

(3) Legal services.

(4) Public or private entitlements or resources.

(5) Financial management.

(6) Personal or environmental safety.

(7) Emergency shelter.
(8) Transportation.
(9) Home delivered meals.
(10) Attendant care.
(11) Homemaker services.

(d) The service plan shall also address, if applicable, special needs of other members of the household unit as they may affect the older adult's need for protective services. The identification in a service plan of service needs of other members of the older adult's household does not obligate the agency to pay the costs of the services.

Source

The provisions of this § 15.93 amended May 17, 2002, effective May 18, 2002, 32 Pa.B. 2412. Immediately preceding text appears at serial pages (228917) to (228918).

Cross References

This section cited in 6 Pa. Code § 15.91 (relating to general); and 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act).

§ 15.94. Service delivery.

(a) The agency shall, with the consent of the older adult, provide for implementation of the course of action recommended in the service plan. The implementation may be provided by direct provision of services by the agency, purchase of services from another agency, referral to another agency, provision of services by family and friends or a combination of these or other methods.

(b) Protective services may not be provided under the act to an older adult who does not consent to services or who, having consented, withdraws consent, unless the services are ordered by a court, requested by a guardian of the older adult or provided under § 15.71 (relating to involuntary intervention by emergency court order).

Source

The provisions of this § 15.94 amended May 17, 2002, effective May 18, 2002, 32 Pa.B. 2412. Immediately preceding text appears at serial page (228918).

Cross References

This section cited in 6 Pa. Code § 15.44 (relating to resolution of substantiated reports).

§ 15.95. Case management.

(a) *Coordination of services.* The protective services caseworker is responsible for coordination of sources of services being provided to the older adult who needs protective services. The caseworker shall also take reasonable steps to assure that services necessary to achieve the goals in the service plan are being provided.

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(b) *Case records.* A separate record shall be established to contain information on protective services cases. The protective service case record on an older adult shall be separated from other records maintained by the agency on that older adult. Confidentiality of the protective services case record shall be maintained by the agency as set forth in §§ 15.101—15.105 (relating to confidentiality). The protective services case record includes the following:

(1) The report of a need for protective services.

(2) The record of investigation.

(3) The written findings of the assessment.

(4) The service plan.

(5) Notes of contact with the older adult and others involved with the case.

(6) Court documents—for example, petitions, orders and the like.

(7) Letters of notification—abused and abuser.

(c) *Reassessment.* Reassessment shall be done for protective service clients.

(1) Reassessment shall be written in the standardized format established by the Department.

(2) Reassessment shall be done before a protective services case is terminated, transferred, it is the agency's judgment that a reassessment is appropriate or the older adult's condition has changed.

Source

The provisions of this § 15.95 amended May 17, 2002, effective May 18, 2002, 32 Pa.B. 2412. Immediately preceding text appears at serial page (228919).

Cross References

This section cited in 6 Pa. Code § 15.113 (relating to time limitation on service purchases).

§ 15.96. Termination of protective services.

(a) The agency shall terminate protective services when the older adult is no longer ''an older adult in need of protective services'' under § 15.2 (relating to definitions).

(b) Except when the older adult withdraws consent to the delivery of protective services, the agency may terminate protective services in one of the following ways:

(1) By closing the case when no further service intervention is required by the older adult.

(2) By closing the case when a court order for services has terminated and the older adult does not consent to further service intervention.

(3) By transferring the older adult to the service management system of the area agency.

(4) By transferring the older adult to another appropriate agency.

(c) When the agency terminates protective services, the agency shall inform the older adult and, if applicable, responsible caretakers of this action and its

rationale and shall attempt to secure a signed statement of understanding concerning the action. When the agency transfers a protective services case, the case record shall reflect the transfer of an older adult to another agency, the specific agency of referral and the acceptance of the referral by the other agency.

Source

The provisions of this § 15.96 amended May 17, 2002, effective May 18, 2002, 32 Pa.B. 2412. Immediately preceding text appears at serial page (228920).

Cross References

This section cited in 6 Pa. Code § 15.13 (relating to organization and structure of protective services functions).

CONFIDENTIALITY

§ 15.101. General.

Information contained in the agency's protective services case files, as defined under § 15.2 (relating to definitions), shall be considered confidential and shall be maintained under this chapter.

Cross References

This section cited in 6 Pa. Code § 15.12 (relating to administrative functions and responsibilities of area agencies on aging); 6 Pa. Code § 15.81 (relating to rights of protective services clients); 6 Pa. Code § 15.95 (relating to case management); and 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act).

§ 15.102. Maintenance of case records.

(a) Protective services case records shall be kept, when not in use by authorized persons, in a locked container and separate from other agency files. The report, the record of investigation, notes of contact with the older adult and others involved with the case, court documents and letters of notification may not be transferred to, or reprinted for, other agency files. The assessment and service plan may be transferred to other agency case files with assurance by the agency that an older adult's complete protective services case record can be immediately produced.

(b) When an individual case record is removed from its storage location for use by an authorized person, the person shall sign for the record according to sign-out procedures developed by the agency.

(c) Except as provided under § 15.105 (relating to limited access to records and disclosure of information), only staff with direct responsibility for protective services functions may be authorized by the agency to have access to the protective services case records. General access is restricted to protective services supervisors, protective services caseworkers and clerical staff assigned to type and maintain case records.

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(d) As provided under § 15.43 (relating to resolution of unsubstantiated reports), when the agency cannot substantiate a report of a need for protective services, the case opened by the unsubstantiated report shall be closed and information identifying the person who made the report and the alleged perpetrator of abuse, if applicable, shall be immediately deleted from the case record.

(e) For the purposes of substantiating a pattern of abuse, neglect, exploitation or abandonment, the name of the older adult reported to be in need of protective services and other information relevant to the circumstances which led to the report may be maintained for 6 months in a separate locked file accessible only to authorized staff for review when necessary to establish that a previous report was made. At the end of 6 months, case records maintained under this subsection shall be destroyed unless additional reports lead to their being reopened.

(f) The agency shall develop written procedures for the deletion or expungement of information in case records and for the destruction of case records so that unauthorized persons are not able to gain access to information from case records. The procedures shall be submitted to the Department in the protective services plan required under § 15.12(b) (relating to administrative functions and responsibilities of area agencies on aging).

Source

The provisions of this § 15.102 amended May 17, 2002, effective May 18, 2002, 32 Pa.B. 2412. Immediately preceding text appears at serial pages (228920) to (228921).

Cross References

This section cited in 6 Pa. Code § 15.12 (relating to administrative functions and responsibilities of area agencies on aging); 6 Pa. Code § 15.81 (relating to rights of protective services clients); 6 Pa. Code § 15.95 (relating to case management); and 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act).

§ 15.103. Responsibilities of staff with access to confidential information.

(a) The agency shall assure that staff with access to information contained, or to be contained, in a case record are fully aware of the confidentiality provisions of this chapter and of the local agency.

(b) A staff person who is authorized to have access to information contained, or to be contained, in a case record is required to take every possible step to safeguard the confidentiality of that information. This requirement extends to known information related to a case but not recorded in writing.

(c) A staff person who is to be authorized to have access to confidential information related to protective services cases shall sign a statement provided by the Department, assuring knowledge of applicable confidentiality requirements and the penalties for violating them.

Source

The provisions of this § 15.103 amended May 17, 2002, effective May 18, 2002, 32 Pa.B. 2412. Immediately preceding text appears at serial pages (228921) to (228922).

Cross References

This section cited in 6 Pa. Code § 15.12 (relating to administrative functions and responsibilities of area agencies on aging); 6 Pa. Code § 15.27 (relating to handling of completed reports); 6 Pa. Code § 15.81 (relating to rights of protective services clients); 6 Pa. Code § 15.95 (relating to case management); 6 Pa. Code § 15.104 (relating to penalties for violation of confidentiality requirements); and 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act).

§ 15.104. Penalties for violation of confidentiality requirements.

(a) If a staff person who is authorized to have access to confidential information under this chapter is strongly suspected of violating the requirements in the signed confidentiality statement under § 15.103(c) (relating to responsibilities of staff with access to confidential information), that person shall be immediately suspended from protective services duties pending an investigation and determination of culpability.

(b) If a staff person who is authorized to have access to confidential information under this chapter is determined upon investigation to have violated the requirements in the signed confidentiality statement under § 15.103(c), that person shall be subject to the appropriate disciplinary action in the confidentiality statement.

Cross References

This section cited in 6 Pa. Code § 15.12 (relating to administrative functions and responsibilities of area agencies on aging); 6 Pa. Code § 15.27 (relating to handling of completed reports); 6 Pa. Code § 15.81 (relating to rights of protective services clients); 6 Pa. Code § 15.95 (relating to case management); and 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act).

§ 15.105. Limited access to records and disclosure of information.

Information in a protective services case record may not be disclosed, except as provided in this section.

(1) Information may be disclosed to a court of competent jurisdiction or under a court order. The protective service agency shall disclose case record information for the purpose of in camera review by the court.

(2) If an investigation by the agency results in a report of criminal conduct, law enforcement officials shall have access to relevant records maintained by the agency or the Department.

(3) In arranging specific services to effect service plans, the agency may disclose to appropriate service providers information necessary to initiate the delivery of services.

(4) A subject of a report, a court-appointed guardian or an attorney providing legal services to the subject of the report made under § 15.23 (relating to

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receiving reports; general agency responsibility) may receive, upon written request, information contained in the report except that prohibited from being disclosed by paragraph (5).

(5) The release of information that would identify the person who made a report of suspected abuse, neglect, exploitation or abandonment or a person who cooperated in a subsequent investigation, is prohibited unless the Secretary can determine that the release will not be detrimental to the safety of the person. Prior to releasing information under this paragraph, the Secretary will notify the person whose identity would be released that the person has 45 days to advise the Secretary why this anticipated release would be detrimental to the safety of that person.

(6) When the Department is involved in the hearing of an appeal by a subject of a report made under § 15.23, the appropriate Department staff shall have access to information in the case record relevant to the appeal.

(7) For the purposes of monitoring agency performance, appropriate staff of the Department may have access to agency protective services records.

(8) For the purposes of monitoring agency performance and carrying out other administrative responsibilities, individuals with local administrative authority over the protective services program may have access to agency protective services records.

Source

The provisions of this § 15.105 amended May 17, 2002, effective May 18, 2002, 32 Pa.B. 2412. Immediately preceding text appears at serial pages (228922) to (228923).

Cross References

This section cited in 6 Pa. Code § 15.12 (relating to administrative functions and responsibilities of area agencies on aging); 6 Pa. Code § 15.46 (relating to law enforcement agencies as available resources); 6 Pa. Code § 15.81 (relating to rights of protective services clients); 6 Pa. Code § 15.82 (relating to rights of alleged abusers); 6 Pa. Code § 15.95 (relating to case management); 6 Pa. Code § 15.102 (relating to maintenance of case files); 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act); and 6 Pa. Code § 15.157 (relating to confidentiality of and access to confidential reports).

FINANCIAL OBLIGATIONS

§ 15.111. Coordination of available resources.

(a) The agency shall insure that funding authorized under the act is not used to supplant public and private entitlements or resources as defined in § 15.2 (relating to definitions) for which older adults are, or may be, eligible.

(b) The agency shall attempt to establish the older adult's eligibility for appropriate public and private entitlements and resources and shall exhaust the eligibility for benefits prior to the utilization of funds authorized by the act for the provision of services.

(c) The agency is required to coordinate the utilization of public and private entitlements and resources. This chapter does not establish a means test for the provision of protective services. A protective service client who receives a service may not be required to pay a fee not required of other older adults receiving the same service.

Source

The provisions of this § 15.111 amended May 17, 2002, effective May 18, 2002, 32 Pa.B. 2412. Immediately preceding text appears at serial pages (228923) to (228924).

§ 15.112. Uses of funding authorized by the act.

The agency may utilize funding authorized by the act to pay for activities, including the following:

(1) Administering protective services plans as described in § 15.12(b) (relating to administrative functions and responsibilities of area agencies on aging).

(2) Receiving reports and maintaining records of reports as provided under §§ 15.23 and 15.101—15.105 (relating to receiving reports; general agency responsibility; and confidentiality).

(3) Conducting investigations under §§ 15.41—15.47 (relating to investigating reports of need for protective services).

(4) Conducting assessments and developing service plans under §§ 15.92 and 15.93 (relating to assessment; and service plan).

(5) Petitioning the court under §§ 15.61—15.63 and 15.71—15.75 (relating to agency access to older persons and records; and emergency intervention).

(6) Providing emergency involuntary intervention under §§ 15.71—15.75.

(7) Arranging for available services needed to carry out service plans, which may include, as appropriate, arranging for services for other household members to reduce, correct or eliminate abuse, neglect, exploitation or abandonment of an older adult. The inclusion of services needed by other household members in the service plan will allow the agency to arrange for the provision of those services through public and private entitlements or resources for which the individuals are or may be eligible. The inclusion does not obligate the agency to pay for the services or to provide services which are not available from another appropriate provider.

(8) Purchasing, on a temporary basis, services determined by the service plan to be necessary to reduce, correct or eliminate abuse, neglect, exploitation or abandonment of an older adult when the services are not available within the existing resources of the agency or another appropriate provider. Funding authorized by the act and expended under an area agency on aging protective services plan may not be used for the purchase of services which are already financed through other State-administered plans for local service delivery or

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through local public and private resources under those plans except with the specific prior approval of the Department. The protective services plan shall identify the agency's proposed expenditures for activities under this paragraph. The agency shall insure that every attempt has been made to provide the service through existing agency resources, appropriate utilization of other providers and the coordination of public and private entitlements and resources prior to entering into the purchase of services for a protective services client.

Source

The provisions of this § 15.112 amended May 17, 2002, effective May 18, 2002, 32 Pa.B. 2412. Immediately preceding text appears at serial pages (228924) to (228925).

Cross References

This section cited in 6 Pa. Code § 15.91 (relating to general).

§ 15.113. Time limitation on service purchases.

(a) After exhausting available steps to provide necessary services through existing agency resources, utilization of other providers and the coordination of public and private entitlements and resources, the agency may purchase those services on a time-limited basis.

(b) The purchase of services under this section is limited to a 30-day period which may be renewed only with adequate justification. The agency shall consider the 30-day period to be a maximum time limit for the purchase of services and not a standard time allotment. After the decision to purchase services has been made, the agency shall continue the pursuit of alternate ways to provide the services and terminate the purchase of services as soon as possible.

(c) If at the end of 30 days of continuous service purchase on behalf of an individual protective services client, the services are still necessary and still available only through purchase, complete justification of the need for services and documentation of the unavailability of the services shall be made a part of the record as required by § 15.95(b) (relating to case management).

Source

The provisions of this § 15.113 amended May 17, 2002, effective May 18, 2002, 32 Pa.B. 2412. Immediately preceding text appears at serial page (228925).

§ 15.114. Obligation of the Commonwealth and the counties.

The obligation of the Commonwealth and the counties to provide funds to the Department or an agency for services provided under this chapter shall be entirely discharged by the appropriations made to the Department or an agency. If the agency has met its responsibility under the law, no action at law or equity may be instituted in a court to require the Department, an agency, county or the Commonwealth to provide benefits or services under the act for which appropriations from the Commonwealth or counties are not available. The responsibility of the

area agency on aging, the county and the Commonwealth to provide funding is met when resources authorized by the act and provided under approved area agency on aging plans have been expended.

STAFF TRAINING AND EXPERIENCE STANDARDS

§ 15.121. Protective services staff qualifications.

(a) *General.* The area agency on aging shall assure that staff directly involved with the protective services caseload meet the minimum standards of training and experience in this chapter. The minimum standards apply to staff assigned to protective services on a full-time basis, a part-time basis or as standby staff. The minimum standards apply to incumbent staff as well as those hired after November 26, 1988.

(b) *Criminal record.* The protective services agency shall require persons to be hired or to be assigned to carry out responsibilities for protective services investigations, assessments and service planning and arrangement to submit the following information:

(1) Under 18 Pa.C.S. §§ 9101—9183 (relating to the criminal history record information act), a report of criminal history record information from the State Police or a statement from the State Police that the State Police Central Repository contains no information relating to that person. The criminal history record information shall be limited to that which is disseminated under 18 Pa.C.S. § 9121(b)(2) (relating to general regulations).

(2) If the applicant or assignee is not a resident of this Commonwealth, a report of Federal criminal history record information under the Federal Bureau of Investigation appropriation of Title II of the Act of October 25, 1972 (Pub. L. No. 92-544, 86 Stat. 1109).

(c) *Staff training and experience requirements.* The minimum standards for protective services job functions are as follows:

(1) *Protective services supervisor*. A protective services supervisor shall:

(i) Have 3 years direct aging casework experience or an equivalent combination of education and experience.

(ii) Complete the curriculum described in § 15.122 (relating to protective services casework training curriculum).

(iii) Complete the curriculum described in § 15.123 (relating to protective services investigation training curriculum) if the protective services supervisor will be performing protective services investigations.

(iv) Complete written evaluations that assess competencies achieved by the learner.

(v) Undergo in-service training in protective services annually as required by the Department.

(2) *Protective services caseworker.* A protective services caseworker shall:

(i) Have 1 year direct aging casework experience.

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(ii) Complete the curriculum described in § 15.122.

(iii) Complete the curriculum described in § 15.123.

(iv) Complete written evaluations that assess competencies achieved by the learner.

(v) Undergo in-service training in protective services annually as required by the Department.

(3) *Protective services intake workers.* Staff persons designated to receive reports of older adults who need protective services shall complete the curriculum under § 15.124 (relating to protective services intake training curriculum).

Source

The provisions of this § 15.121 amended May 17, 2002, effective May 18, 2002, 32 Pa.B. 2412. Immediately preceding text appears at serial pages (228925) to (228927).

Cross References

This section cited in 6 Pa. Code § 15.2 (relating to definitions); 6 Pa. Code § 15.11 (relating to administrative functions and responsibilities of the Department); 6 Pa. Code § 15.13 (relating to organization and structure of protective services functions); 6 Pa. Code § 15.26 (relating to screening and referral of reports received); 6 Pa. Code § 15.41 (relating to reports required to be investigated); 6 Pa. Code § 15.46 (relating to law enforcement agencies as available resources); 6 Pa. Code § 15.125 (relating to availability of training); and 6 Pa. Code § 15.126 (relating to training evaluation).

§ 15.122. Protective services casework training curriculum.

The protective services casework training curriculum shall consist of comprehensive training including the following topics:

(1) An overview of abuse, neglect, exploitation and abandonment.

(2) Laws and regulations of the Commonwealth relating to abuse, neglect, exploitation and abandonment of older adults.

(3) Detection of abuse, neglect, exploitation and abandonment.

(4) Protective services case assessments.

(5) Provision of protective services.

(6) Interviewing skills.

(7) The resistant older adult.

(8) Utilization of local resources.

(9) Incompetence or incapacity.

(10) Relationships with other agencies.

(11) Confidentiality.

(12) Institutional investigations.

(13) Service options for victims of abuse, neglect, exploitation and abandonment.

(14) Informed consent.

(15) Self-neglect.

(16) Retaliation.

Source

The provisions of this § 15.122 amended May 17, 2002, effective May 18, 2002, 32 Pa.B. 2412. Immediately preceding text appears at serial page (228927).

Cross References

This section cited in 6 Pa. Code § 15.2 (relating to definitions); 6 Pa. Code § 15.11 (relating to administrative functions and responsibilities of the Department); 6 Pa. Code § 15.13 (relating to organization and structure of protective services functions); 6 Pa. Code § 15.26 (relating to screening and referral of reports received); 6 Pa. Code § 15.41 (relating to reports required to be investigated); 6 Pa. Code § 15.46 (relating to law enforcement agencies as available resources); 6 Pa. Code § 15.121 (relating to protective services staff qualifications); and 6 Pa. Code § 15.127 (relating to in-service training).

§ 15.123. Protective services investigation training curriculum.

The protective services investigation training curriculum shall consist of comprehensive training including the following topics:

(1) Laws and regulations of the Commonwealth related to investigations and criminal procedures.

(2) The criminal justice system.

(3) Developing the investigative plan.

(4) Investigative techniques.

(5) Maintaining control of the interview.

(6) Interviewing reporters.

(7) Interviewing collateral sources.

(8) Interviewing victims.

(9) Observation techniques.

(10) Techniques to obtain documentary evidence.

(11) Techniques to gather and preserve physical evidence.

(12) Closing the investigation.

(13) Presenting testimony in court.

(14) Coordination with other State agencies.

Source

The provisions of this § 15.123 amended May 17, 2002, effective May 18, 2002, 32 Pa.B. 2412. Immediately preceding text appears at serial pages (228927) to (228928).

Cross References

This section cited in 6 Pa. Code § 15.2 (relating to definitions); 6 Pa. Code § 15.11 (relating to administrative functions and responsibilities of the Department); 6 Pa. Code § 15.13 (relating to organization and structure of protective services functions); 6 Pa. Code § 15.41 (relating to reports required to be investigated); 6 Pa. Code § 15.46 (relating to law enforcement agencies as available resources); 6 Pa. Code § 15.121 (relating to protective services staff qualifications); and 6 Pa. Code § 15.127 (relating to in-service training).

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§ 15.124. Protective services intake training curriculum.

The protective services intake training curriculum shall consist of training including the following topics:

(1) Interviewing the reporter.

(2) Completion of the report form.

(3) Preliminary case status assessment to determine report categories.

(4) Requirements for referral of the report to the protective services staff.

(5) Emergency procedures.

(6) Confidentiality.

Cross References

This section cited in 6 Pa. Code § 15.2 (relating to definitions); 6 Pa. Code § 15.11 (relating to administrative functions and responsibilities of the Department); 6 Pa. Code § 15.13 (relating to organization and structure of protective services functions); 6 Pa. Code § 15.24 (relating to receiving reports; agency intake process); 6 Pa. Code § 15.41 (relating to reports required to be investigated); 6 Pa. Code § 15.46 (relating to law enforcement agencies as available resources); and 6 Pa. Code § 15.121 (relating to protective services staff qualifications).

§ 15.125. Availability of training.

(a) The Department will provide for the development of training curricula described in this section and will require the training to be conducted on a timely and recurring basis. The Department will also provide for annual in-service training.

(b) The agency shall utilize staff meeting the requirements in § 15.121(c)(1) and (2) (relating to protective services staff qualifications) to conduct training for protective services intake workers. The training shall be in conformity with the curriculum for protective services intake workers established by the Department.

Cross References

This section cited in 6 Pa. Code § 15.2 (relating to definitions); 6 Pa. Code § 15.11 (relating to administrative functions and responsibilities of the Department); 6 Pa. Code § 15.13 (relating to organization and structure of protective services functions); 6 Pa. Code § 15.41 (relating to reports required to be investigated); and 6 Pa. Code § 15.46 (relating to law enforcement agencies as available resources).

§ 15.126. Training evaluation.

A person who completes the training set forth for each job function in § 15.121 (relating to protective services staff qualifications) shall complete written evaluations that assess competencies achieved by the learner.

Cross References

This section cited in 6 Pa. Code § 15.2 (relating to definitions); 6 Pa. Code § 15.11 (relating to administrative functions and responsibilities of the Department); 6 Pa. Code § 15.13 (relating to organization and structure of protective services functions); 6 Pa. Code § 15.41 (relating to reports required to be investigated); and 6 Pa. Code § 15.46 (relating to law enforcement agencies as available resources).

§ 15.127. In-service training.

(a) In addition to the required training set forth in §§ 15.122 and 15.123 (relating to protective services casework training curriculum; and protective services investigation training curriculum), protective services supervisors and protective services caseworkers shall participate in in-service training in protective services as required by the Department each year beginning with the calendar year following completion of the required basic protective services training set forth in § 15.122 (relating to protective services casework training curriculum).

(b) Annual in-service training shall consist of a minimum of 1 day of training and may include the following topics:

(1) Update on laws and regulations relating to protective services.

(2) Technical assistance for common problems.

(3) Best practice presentations.

Source

The provisions of this § 15.127 amended May 17, 2002, effective May 18, 2002, 32 Pa.B. 2412. Immediately preceding text appears at serial page (228929).

Cross References

This section cited in 6 Pa. Code § 15.2 (relating to definitions); 6 Pa. Code § 15.11 (relating to administrative functions and responsibilities of the Department); 6 Pa. Code § 15.13 (relating to organization and structure of protective services functions); 6 Pa. Code § 15.41 (relating to reports required to be investigated); and 6 Pa. Code § 15.46 (relating to law enforcement agencies as available resources).

§ 15.131. [Reserved].

Source

The provisions of this § 15.131 reserved May 17, 2002, effective May 18, 2002, 32 Pa.B. 2412. Immediately preceding text appears at serial page (228930).

CRIMINAL HISTORY RECORD INFORMATION REPORTS

§ 15.141. Prospective facility personnel.

(a) *General rule.* A facility shall require applicants for employment to submit applications with a criminal history report, obtained within 1 year immediately preceding the date of application, or as in § 15.144 (relating to procedure), as follows:

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(1) *State Police criminal history record.* Facilities shall require all applicants to submit a State Police criminal history record.

(2) *Federal criminal history record.* If the applicant is not and for the 2 years immediately preceding the date of application has not been a resident of this Commonwealth, the facility shall require the applicant to submit a Federal criminal history record and a full set of fingerprints to the Department which will be forwarded to the Federal Bureau of Investigation.

(b) *Proof of residency.* Facilities may require an applicant to furnish proof of residency, including, but not limited to, any one of the following documents:

(1) Motor vehicle records, such as a valid driver's license.

(2) Housing records, such as mortgage records, rent receipts or certification of residency in a nursing home.

(3) Public utility records and receipts, such as electric bills.

(4) Local tax records.

(5) A completed and signed, Federal, State or local income tax return with the applicant's name and address preprinted on it.

(6) Employment records, including records of unemployment compensation.

Source

The provisions of this § 15.141 adopted May 17, 2002, effective May 18, 2002, 32 Pa.B. 2412.

Cross References

This section cited in 6 Pa. Code § 15.41 (relating to reports required to be investigated); and 6 Pa. Code § 15.147 (relating to violations).

§ 15.142. Employee requirements.

(a) The following employees are required to submit a criminal history report:

(1) Administrators and operators who have direct contact with clients and who began serving as administrators and operators after July 1, 1998. Residents of this Commonwealth shall comply within 30 days of employment and nonresidents shall comply within 90 days.

(2) Employees of a facility who were employed after July 1, 1998. Residents of this Commonwealth shall comply within 30 days of employment and nonresidents shall comply within 90 days.

(3) Exceptions are as follows:

(i) Employees of the facility on July 1, 1998, who were employed by the facility for a continuous period of at least 1 year prior to July 1, 1998.

(ii) Employees who have complied with this section who transfer to another facility established or supervised, or both, by the same operator.

(iii) Employees who are employed by a new facility solely through a transfer of ownership of that facility.

(iv) A consumer attendant.

(v) An individual providing care to a care-dependent person, and employed by the care-dependent person, or by another person designated by the care-dependent person, and not by or through a home health care agency.

(vi) An individual, employed by an enterprise that operates facilities and nonfacilities in the same physical location, who has no employment responsibilities in the facility (Example: An individual employed by a hospital which also has within it a long-term care nursing unit. The individual is employed to work in the hospital).

(vii) A contract employee who has neither direct contact with residents in a facility nor unsupervised access.

(viii) An individual, employed by a home health agency or other entity that supplies, arranges for, or refers personnel to provide care to care-dependent persons, who is employed for purposes other than providing care in a facility or in a recipient's place of residence (example: an individual employed as a bookkeeper by an agency which supplies homemaker/home health aides).

(ix) An individual functioning in a facility as a volunteer.

(b) Employees at facilities that supply, arrange for, or refer their employees to provide care in other facilities shall provide a criminal history report to the facility that supplies, arranges for, or refers them and to the facility at which they provide care. The exemptions of this section are applicable to these employees. (Example: Employees of a home health care staffing agency assigned by the agency to provide care in a long-term care nursing facility must provide a criminal history report to the staffing agency and to the long-term care nursing facility.) The staffing agency shall be responsible for notifying the employee of criminal history report requirements.

(c) Criminal history reports provided by the Department of Education, under the Nurse Aide Resident Abuse Prevention Training Act (63 P. S. §§ 671—680), which meet the criteria established in this chapter may be accepted to satisfy the requirements of this chapter.

Source

The provisions of this § 15.142 adopted May 17, 2002, effective May 18, 2002, 32 Pa.B. 2412.

Cross References

This section cited in 6 Pa. Code § 15.41 (relating to reports required to be investigated); and 6 Pa. Code § 15.147 (relating to violations).

§ 15.143. Facility responsibilities.

(a) A facility may not hire an applicant nor retain an employee required to submit a criminal history report if the criminal history report reveals a felony conviction under The Controlled Substance, Drug, Device and Cosmetic Act (35 P. S. §§ 780-101—780-144).

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(b) A facility may not hire an applicant nor retain any employee required to submit a criminal history report if the criminal history report reveals a conviction under one or more of the following provisions of 18 Pa.C.S. (relating to the Crimes Code):

(1) Chapter 25 (relating to criminal homicide).

(2) Section 2702 (relating to aggravated assault).

(3) Section 2901 (relating to kidnapping).

(4) Section 2902 (relating to unlawful restraint).

(5) Section 3121 (relating to rape).

(6) Section 3122.1 (relating to statutory sexual assault).

(7) Section 3123 (relating to involuntary deviate sexual intercourse).

(8) Section 3124.1 (relating to sexual assault).

(9) Section 3125 (relating to aggravated indecent assault).

(10) Section 3126 (relating to indecent assault).

(11) Section 3127 (relating to indecent exposure).

(12) Section 3301 (relating to arson and related offenses).

(13) Section 3502 (relating to burglary).

(14) Section 3701 (relating to robbery).

(15) A felony offense under Chapter 39 (relating to theft and related offenses), or two or more misdemeanors under Chapter 39.

(16) Section 4104 (relating to tampering with records or identification).

(17) Section 4114 (relating to securing execution of documents by deception).

(18) Section 4302 (relating to incest).

(19) Section 4303 (relating to concealing death of child).

(20) Section 4304 (relating to endangering welfare of children).

(21) Section 4305 (relating to dealing in infant children).

(22) Section 4952 (relating to intimidation of witnesses or victims).

(23) Section 4953 (relating to retaliation against witness, victim or party).

(24) A felony offense under section 5902(b) (relating to prostitution and related offenses).

(25) Section 5903(c) or (d) (relating to obscene and other sexual materials and performances).

(26) Section 6301 (relating to corruption of minors).

(27) Section 6312 (relating to sexual abuse of children).

(c) A facility may not hire an applicant nor retain an employee required to submit a criminal history report if the criminal history report reveals conviction of a Federal or out-of-State offense similar in nature, as determined by the Department, to those listed in subsections (a) and (b).

(d) A facility shall ensure that applicant or employee responsibility to obtain criminal history reports is explained to each applicant or employee orally and in writing in a language understood by the applicant or employee.

(e) Facilities shall maintain employment records which include copies of completed request forms for criminal history reports, State Police criminal history records and Department letters of determination regarding Federal criminal history records.

(f) An administrator shall assure that information obtained from State Police criminal history records and Department letters of determination regarding Federal criminal history records remain confidential and are used solely to determine an applicant's eligibility for employment or an employee's eligibility for retention.

(g) If the decision not to hire or to terminate employment is based in whole or in part on State Police criminal history records, Department letters of determination regarding Federal criminal history records, or both, facilities shall provide applicants and employees with information on how to appeal to the sources of criminal history records if they believe the records are in error.

Source

The provisions of this § 15.143 adopted May 17, 2002, effective May 18, 2002, 32 Pa.B. 2412.

Cross References

This section cited in 6 Pa. Code § 15.41 (relating to reports required to be investigated); 6 Pa. Code § 15.146 (relating to provisional hiring); and 6 Pa. Code § 15.147 (relating to violations).

§ 15.144. Procedure.

(a) Applicants and employees required to obtain a criminal history report from the State Police may obtain forms from a State Police facility.

(1) The State Police may charge a fee of not more than $10. A facility's check, cashier's check, certified check or money order shall accompany the request unless other payment arrangements are made with the State Police.

(2) Facilities may at their option require applicants and employees to return the form to a designated individual for submission by the facility.

(b) Applicants and employees required to obtain a Federal criminal history report shall obtain the information packet from the facility or the Department.

(1) Applicants and employees shall return the Federal Bureau of Investigation fingerprint card and forms, and a cashier's check, certified check or money order payable to the Federal Bureau of Investigation in the exact amount established by the Federal Bureau of Investigation. Upon receipt, the Department will submit the request to the State Police for transfer to the Federal Bureau of Investigation.

(2) Upon receipt of the criminal history report from the Federal Bureau of Investigation, the Department will determine if the applicant is eligible for employment or if the employee may be retained. The Department will contact the applicant or employee with a written letter of determination.

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(c) Applicants and employees shall complete all necessary forms. Facilities shall assist an applicant or employee to comply with this requirement if requested.

(d) Facility administrators may assume financial responsibility for the fees through a quarterly payment system.

(e) Applicants and employees are responsible for reviewing their own criminal history reports for accuracy.

Source

The provisions of this § 15.144 adopted May 17, 2002, effective May 18, 2002, 32 Pa.B. 2412.

Cross References

This section cited in 6 Pa. Code § 15.41 (relating to reports required to be investigated); 6 Pa. Code § 15.141 (relating to prospective facility personnel); and 6 Pa. Code § 15.147 (relating to violations).

§ 15.145. Applicant or employee rights of review.

(a) An applicant or employee may review, challenge and appeal the completeness or accuracy of the applicant's or employee's criminal history report under 18 Pa.C.S. §§ 9125 and 9152—9183 or 28 CFR 16.34 (relating to procedure to obtain change, correction or updating of identification records), or both.

(b) An applicant or employee may challenge the conviction comparison interpretation of the Department involving the Federal criminal history record by filing an appeal with the Department under 1 Pa. Code Chapter 35 (relating to formal proceedings) and Chapter 3 (relating to fair hearings and appeals). Appeals must be postmarked within 30 days from receipt of the Department's letter and be in writing to the attention of the Secretary of the Department.

Source

The provisions of this § 15.145 adopted May 17, 2002, effective May 18, 2002, 32 Pa.B. 2412.

Cross References

This section cited in 6 Pa. Code § 15.41 (relating to reports required to be investigated); and 6 Pa. Code § 15.147 (relating to violations).

§ 15.146. Provisional hiring.

(a) Facilities may employ applicants on a provisional basis for a single period not to exceed 30 days for applicants requesting a State Police criminal history record, and a single period not to exceed 90 days for applicants requesting a Federal criminal history record, if all of the following conditions are met:

(1) Applicants shall have applied for a criminal history report and provided the facility with a copy of the completed request forms.

(2) The facility shall have no knowledge about the applicant that would disqualify the applicant from employment under 18 Pa.C.S. § 4911 (relating to tampering with public record information).

(3) The applicant shall swear or affirm in writing that the applicant is not disqualified from employment under the act.

(4) The provisionally employed applicant shall receive an orientation which provides information on policies, procedures and laws which address standards of proper care and recognition and reporting of abuse or neglect, or both, of recipients.

(5) The facility shall regularly supervise the applicant carrying out assigned duties. The results of the observations shall be documented in the employee personnel file.

(6) A home health care agency shall supervise the applicant through random, direct observation and evaluation of the applicant and care recipient by an employee who has been employed by the home health agency for at least 1 year. The results of the observations shall be documented in the employee personnel file.

(7) A home health agency which has been in business for less than 1 year shall supervise the applicant through random, direct observation and evaluation of the applicant and care recipient by an employee with prior employment experience of at least 1 year with one or more other home health care agencies. The results of the observations shall be documented in the employee personnel file.

(b) If the information obtained from the criminal history report reveals that the applicant is disqualified from employment in accordance with § 15.143 (relating to facility responsibilities), the applicant shall be dismissed immediately.

(c) The administrator or designee shall review the contents of the applicant's personnel file on the 30th day of provisional employment of a Pennsylvania resident applicant or the 90th day of provisional employment of a nonresident applicant to insure that the copy of the State Police criminal history record, the letter of determination issued by the Department, or both is physically present in the folder along with correspondence from the State Police advising that the applicant's employment may be continued or must be terminated.

(d) Except as provided in subsection (e), if inspection of the file reveals that the State Police criminal history record, the letter of determination issued by the Department, or both has not been provided to the employer, the applicant's employment shall be immediately suspended or terminated.

(e) If the criminal history record report, the letter of determination issued by the Department, or both, has not been provided due to the inability of the State Police or the Federal Bureau of Investigation to provide them timely, the period of provisional employment shall be extended until the facility receives the required reports. During the extended provisional employment period, the supervision and documentation requirements of this section shall be continued.

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Source

The provisions of this § 15.146 adopted May 17, 2002, effective May 18, 2002, 32 Pa.B. 2412.

Cross References

This section cited in 6 Pa. Code § 15.41 (relating to reports required to be investigated); and 6 Pa. Code § 15.147 (relating to violations).

§ 15.147. Violations.

(a) *Administrative.*

(1) An administrator or designee or facility owner-operator who intentionally or willfully fails to comply or obstructs compliance with §§ 15.141—15.146 commits a violation of this chapter and shall be subject to an administrative penalty.

(2) Violations and penalties shall be determined by the Commonwealth agency that licenses the facility. The Commonwealth agency may issue an order assessing a civil penalty of not more than $2,500. An order issued under this paragraph is subject to due process as set forth in 2 Pa.C.S. §§ 501—508 and 551—555 (relating to practice and procedure of Commonwealth agencies; and practice and procedure of local agencies) and judicial review in 2 Pa.C.S. §§ 701—704 and 751—754 (relating to judicial review of Commonwealth agency action; and judicial review of local agency action).

(3) Representatives of the Departments of Aging, Health and Public Welfare who suspect violations of this section shall report them to the appropriate Commonwealth licensing agency under procedures developed by the Department in consultation with the licensing agency. The report shall be made in writing and include, at a minimum, the facility, the administrator, owner, operator or designee suspected of committing the violation and a description of the suspected violation.

(b) *Criminal.* An administrator or designee or facility owner who intentionally or willfully fails to comply or obstructs compliance with §§ 15.141—15.146 commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of $2,500 or to imprisonment for not more than 1 year, or both.

Source

The provisions of this § 15.147 adopted May 17, 2002, effective May 18, 2002, 32 Pa.B. 2412.

Cross References

This section cited in 6 Pa. Code § 15.41 (relating to reports required to be investigated).

REPORTING SUSPECTED ABUSE

§ 15.151. General requirements.

(a) Administrators or employees who have reasonable cause to suspect that a recipient is a victim of abuse shall:

(1) Immediately make an oral report to the agency.

(2) Make a written report to the agency within 48 hours.

(b) Employees making oral or written reports shall immediately notify the administrator or designee of these reports.

(c) Agencies shall notify administrators, or their designees, and State agencies with facility licensing responsibilities immediately when written reports of abuse are received.

(d) Employees required to report abuse may request administrators or their designees to make, or assist the employees to make, oral or written reports.

Source

The provisions of this § 15.151 adopted May 17, 2002, effective May 18, 2002, 32 Pa.B. 2412.

Cross References

This section cited in 6 Pa. Code § 15.21 (relating to general reporting provisions); 6 Pa. Code § 15.152 (relating to additional reporting requirements); 6 Pa. Code § 15.153 (relating to contents of reports); 6 Pa. Code § 15.155 (relating to investigation); and 6 Pa. Code § 15.158 (relating to penalties).

§ 15.152. Additional reporting requirements.

(a) Administrators or employees who have reasonable cause to suspect that a recipient is the victim of sexual abuse, serious physical injury or serious bodily injury, or that a recipient's death is suspicious, shall, in addition to the reporting requirements in § 15.151(a) (relating to general requirements):

(1) Immediately make an oral report to law enforcement officials. An employee shall immediately notify the facility administrator or a designee following a report to law enforcement officials.

(2) Make an oral report to the Department during the current business day or, if the incident occurs after normal business hours, at the opening of the next business day.

(3) Make a written report within 48 hours of making the oral report, to law enforcement officials and the agency.

(b) Law enforcement officials shall promptly notify facility administrators or their designees that reports have been made with them.

(c) Administrators or employees shall, in addition to complying with these requirements, comply with reporting requirements of the Commonwealth licensing agency that licenses or funds the facility.

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Source

The provisions of this § 15.152 adopted May 17, 2002, effective May 18, 2002, 32 Pa.B. 2412.

Cross References

This section cited in 6 Pa. Code § 15.21 (relating to general reporting provisions); 6 Pa. Code § 15.153 (relating to contents of reports); 6 Pa. Code § 15.154 (relating to reports to Department and coroner by agencies); 6 Pa. Code § 15.155 (relating to investigation); 6 Pa. Code § 15.156 (relating to restrictions on employees); and 6 Pa. Code § 15.158 (relating to penalties).

§ 15.153. Contents of reports.

(a) Written reports under §§ 15.151 and 15.152 (relating to general requirements; and additional reporting requirements) shall be made on forms supplied or approved by the Department.

(b) The report shall include, at a minimum, the following information:

(1) Name, age and address of recipient.

(2) Name, address of recipient's guardian or next-of-kin.

(3) Facility name and address.

(4) Description of the incident.

(5) Specific comments or observations.

Source

The provisions of this § 15.153 adopted May 17, 2002, effective May 18, 2002, 32 Pa.B. 2412.

Cross References

This section cited in 6 Pa. Code § 15.21 (relating to general reporting provisions); and 6 Pa. Code § 15.158 (relating to penalties).

§ 15.154. Reports to Department and coroner by agencies.

(a) *Department.*

(1) Within 48 hours of receipt of a written report under § 15.152 (relating to additional reporting requirements) involving sexual abuse, serious physical injury, serious bodily injury or suspicious death, the agency shall transmit a written report to the Department.

(2) A report under this subsection shall be made in a manner and on forms prescribed by the Department. The report shall include, at a minimum, the following information.

(i) The name and address of the alleged victim.

(ii) Where the suspected abuse occurred.

(iii) The age and sex of the alleged perpetrator and victim.

(iv) The nature and extent of the suspected abuse, including evidence of prior abuse.

(v) The name and relationship of the individual responsible for causing the alleged abuse to the victim, if known, and evidence of prior abuse by that individual.

(vi) The source of the report.

(vii) The individual making the report and where that individual can be reached.

(viii) The actions taken by the reporting source, including taking of photographs and X-rays, removal of recipient and notification under subsection (b).

(b) *Coroner.* For a report under § 15.152 which concerns the death of a recipient, if there is reasonable cause to suspect that the recipient died as a result of abuse, the agency shall give the oral report and forward a copy of the written report to the county coroner of the county wherein the death occurred.

Source

The provisions of this § 15.154 adopted May 17, 2002, effective May 18, 2002, 32 Pa.B. 2412.

Cross References

This section cited in 6 Pa. Code § 15.21 (relating to general reporting provisions); and 6 Pa. Code § 15.158 (relating to penalties).

§ 15.155. Investigation.

(a) *Agency response*. Upon receipt of a report under §§ 15.151 and 15.152 (relating to general requirements; and additional reporting requirements), the agency shall respond as follows:

(1) If the victim or recipient is 60 years of age or older, the agency shall conduct an investigation to determine if the subject of the report is in need of protective services. The investigation by the agency shall be conducted as set forth at §§ 15.41—15.47 (relating to investigating reports of need for protective services).

(2) If the victim or recipient is under 60 years of age, the agency may not conduct an investigation. The investigation of the reports shall be conducted by the State agency, if any, that licensed the facility.

(3) If the victim or recipient is under 18 years of age, the agency shall notify and forward reports to the regional office of the Department of Public Welfare, Office of Children, Youth and Families or the State ''ChildLine'' and the county office of child protective services.

(4) If the victim or recipient resides in a nursing home or is receiving home health services, the agency shall notify and forward reports to the Department of Health office with facility licensing responsibilities and the regional office of the Department of Health.

(5) If the victim or recipient resides in a personal care home, the agency shall notify and forward reports to the Department of Public Welfare regional office with facility licensing responsibilities.

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(6) If the victim or recipient resides in a domiciliary care home or receives services from an adult daily living center, the agency shall notify and forward reports to the Department.

(7) If the agency has knowledge or believes that the victim or recipient has mental retardation or a mental health condition, the agency shall notify the Department of Public Welfare office with facility licensing responsibilities and the county MH/MR office in addition to making other reports required by this subsection.

(b) *Cooperation.* To the fullest extent possible, law enforcement officials, the facility, the Commonwealth agency that licensed the facility and the agency shall coordinate their respective investigations, and shall advise each other and provide applicable additional information on an ongoing basis.

Source

The provisions of this § 15.155 adopted May 17, 2002, effective May 18, 2002, 32 Pa.B. 2412.

Cross References

This section cited in 6 Pa. Code § 15.21 (relating to general reporting provisions); and 6 Pa. Code § 15.158 (relating to penalties).

§ 15.156. Restrictions on employees.

(a) Upon notification that an employee is alleged to have committed abuse, the facility shall immediately develop and implement an individual plan of supervision or, when appropriate, suspension of the employee. The facility shall submit to the agency and the Commonwealth agency with regulatory authority over the facility a copy of the employee's individual plan of supervision for approval within the agencies' accepted time frames.

(b) Following approval of an individual plan of supervision by the agency and Commonwealth agency, the facility shall follow the plan. Changes to the plan must be approved by the agency and the Commonwealth agency with regulatory authority over the facility prior to their implementation.

(c) The individual plan of supervision established by a home health care agency shall, in addition to the requirements of this section, include periodic, random direct observation and evaluation of the employee and care recipient by an individual continuously employed by the home health care agency for at least 1 year. For a home health agency in business for less than 1 year, supervision shall include random, direct observation and evaluation by an employee with prior employment experience of at least 1 year with one or more other home health care agencies.

(d) Upon being notified by law enforcement officials of a decision to file criminal charges against an employee, as a result of a report made in compliance with § 15.152 (relating to additional reporting requirements), the facility shall inform the Commonwealth agency that licenses the facility. The Commonwealth

licensing agency shall order the facility to immediately deny the employee access to recipients at the facility. If the employee is a director, operator, administrator or supervisor, the employee shall be subject to restrictions by the Commonwealth licensing agency to assure the safety of recipients at the facility.

Source

The provisions of this § 15.156 adopted May 17, 2002, effective May 18, 2002, 32 Pa.B. 2412.

Cross References

This section cited in 6 Pa. Code § 15.21 (relating to general reporting provisions); and 6 Pa. Code § 15.158 (relating to penalties).

§ 15.157. Confidentiality of and access to confidential reports.

(a) *General rule.* Except as provided in subsection (b) and § 15.105 (relating to limited access to records and disclosure of information), all information concerning a report under this chapter shall be confidential.

(b) *Exceptions.* Relevant information concerning a report under this chapter shall be made available to the following:

(1) An employee of the Department or of an agency in the course of official duties in connection with responsibilities under this chapter, including the long term care ombudsman.

(2) An employee of the Department of Health or the Department of Public Welfare in the course of official duties.

(3) An employee of an agency of another state that performs protective services similar to those under this chapter.

(4) A practitioner of the healing arts who is examining or treating a recipient and who suspects that the recipient is in need of protection under this chapter.

(5) The director, or an individual specifically designated in writing by the director, of a hospital or other medical institution where the victim is being treated if the director or designee suspects the recipient is in need of protection under this chapter.

(6) The recipient or the guardian of the recipient.

(7) A court of competent jurisdiction under a court order.

(8) The Attorney General.

(9) Law enforcement officials of any jurisdiction as long as the information is relevant in the course of investigating cases of abuse.

(10) A mandated reporter who made a report of suspected abuse. Information released under this paragraph shall be limited to the following:

(i) The final status of the report following the investigation.

(ii) Services provided or to be provided by the agency.

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(c) *Excision of certain names.* The name of the person suspected of committing the abuse shall be excised from a report made available under subsection (b)(4), (5) and (10).

(d) *Release of information to alleged perpetrator and victim.* Upon written request, the alleged perpetrator and victim may receive a copy of all information, except that prohibited from being disclosed by subsection (e).

(e) *Protecting identity of person making report.* Except for reports to law enforcement officials, the release of data that would identify the individual who made a report under this chapter or an individual who cooperated in a subsequent investigation is prohibited. Law enforcement officials shall treat all reporting sources as confidential information.

Source

The provisions of this § 15.157 adopted May 17, 2002, effective May 18, 2002, 32 Pa.B. 2412.

Cross References

This section cited in 6 Pa. Code § 15.21 (relating to general reporting provisions); and 6 Pa. Code § 15.158 (relating to penalties).

§ 15.158. Penalties.

(a) *Administrative.*

(1) An administrator or a designee or facility owner who intentionally or willfully fails to comply or obstructs compliance with §§ 15.151—15.157 or who intimidates or commits a retaliatory act against an employee who complies in good faith with this chapter commits a violation of this chapter and shall be subject to an administrative penalty.

(2) Violations and penalties shall be determined by the Commonwealth agency that regulates the facility. The Commonwealth agency may issue an order assessing a civil penalty of not more than $2,500. An order issued under this paragraph is subject to due process as set forth in 2 Pa.C.S. §§ 501—508 and 551—555 (relating to practice and procedure of Commonwealth agencies; and practice and procedure of local agencies) and judicial review in 2 Pa.C.S. §§ 701—704 and 751—754 (relating to judicial review of Commonwealth agency action; and judicial review of local agency action).

(3) Representatives of the Departments of Aging, Health and Welfare who suspect violations of this section will report them to the appropriate Commonwealth licensing agency under procedures developed by the Department in consultation with the licensing agency. The report shall be made in writing and include, at a minimum, the facility, the administrator, owner, operator or designee suspected of committing the violation and a description of the suspected violation.

(b) *Criminal.* An administrator or a designee or facility owner who intentionally or willfully fails to comply, or obstructs compliance, with §§ 15.151—

15.157 commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of $2,500 or to imprisonment for not more than 1 year, or both.

(c) *Penalties for failure to report.* A person required to report a case of suspected abuse under §§ 15.151—15.157 and who willfully fails to do so commits a summary offense for the first violation and a misdemeanor of the third degree for a second or subsequent violation. If the agency learns of a refusal to complete all reporting requirements, the agency shall notify the police within 72 hours.

Source

The provisions of this § 15.158 adopted May 17, 2002, effective May 18, 2002, 32 Pa.B. 2412.

§ 15.159. Immunity.

An administrator or a facility will not be held civilly liable for any action directly related to good faith compliance with this chapter.

Source

The provisions of this § 15.159 adopted May 17, 2002, effective May 18, 2002, 32 Pa.B. 2412.

OTHER ADMINISTRATIVE PROVISIONS

§ 15.161. Waivers.

(a) The Department may, at its discretion and for justifiable reason, grant exceptions to and departures from this chapter to an area agency on aging when the area agency on aging can, by clear and convincing evidence, demonstrate that compliance would cause an unreasonable and undue hardship upon the area agency on aging and that an exception would not impair the health, safety or welfare of older adults or otherwise compromise the intent of this chapter. The Department cannot, however, waive statutory requirements in the act.

(b) A waiver request shall be made in writing to the Secretary. A request shall specifically identify and explain the burden created by the requirement for which the exception is being sought, the alternative method for fulfilling the basic intent of the requirement and evidence of the steps to be taken to assure that the health, safety and welfare of older adults will not be compromised.

(c) An exception granted under this chapter may be revoked by the Department at its discretion for a justifiable reason. Notice of revocation will be in writing and will include the reason for the action of the Department and a specific date upon which the exception will be terminated.

(d) In revoking an exception, the Department will provide for a reasonable time between the date of written notice of revocation and the date of termination of an exception for the agency to come into compliance with the applicable regulations.

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(e) If an agency wishes to request a reconsideration of a denial or revocation of an exception, it shall do so in writing to the Secretary within 15 days of receipt of the adverse notification.

Source

The provisions of this § 15.161 adopted May 17, 2002, effective May 18, 2002, 32 Pa.B. 2412.

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